Laws Affecting Students

Act 1097 of 1995 specifies that school districts teach current Arkansas laws of particular relevance to students in grades seven through 12. Ninth-grade civics and 12th-grade American government are targeted courses for this purpose, but instruction in the laws may be incorporated into any courses within these grades.
Decisions of the 2001 Arkansas General Assembly resulted in changes to laws affecting students. The ADE has issued a completely revised compilation of these laws. The revised 2002 compilation and table of contents are listed below.

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Arkansas Laws Affecting Students
Revised February 2002

The February 2002 compilation of Arkansas laws which affect students is a revised and reformatted document. It contains all legislative changes enacted by the 1999 General Assembly. This version should replace any previous compilation disseminated by the Arkansas Department of Education. Each of the Educational Service Cooperatives has one copy of the 2000 edition available for use by its school districts. It may also be accessed on the Arkansas Department of Education web site.

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CRIMINAL OFFENSES INVOLVING MINORS

5-4-402. Place of imprisonment.

(a) Except as provided in §§ 5-4-203 and 5-4-304, a defendant convicted of a felony and sentenced to imprisonment shall be committed to the custody of the Department of Correction for the term of his sentence or until released in accordance with law.

(b) A defendant convicted of a misdemeanor and sentenced to imprisonment shall be committed to the county jail or other authorized institution designated by the court for the term of his sentence or until released in accordance with law.

(c) A defendant convicted of a violation of § 5-64-401 shall be committed to the custody of the Department of Correction for the term of his sentence or until released in accordance with law.

(d)(1)(A) A juvenile sentenced in circuit court who is less than sixteen (16) years of age when sentenced shall be committed to the custody of the Division of Youth Services until his sixteenth birthday, at which time he shall be transferred to the Department of Correction except as provided by court order or parole decision made by the Post Prison Transfer Board.

(B) All records from the Division of Youth Services shall be transferred to the Department of Correction at the time the juvenile is transferred.

(2) Juveniles less than sixteen (16) years of age who are awaiting transfer to the Department of Correction shall be segregated from the general delinquency population housed at the Division of Youth Services.

(e)(1) With the consent and approval of the division, the Department of Correction may transfer from the Department of Correction to the division any inmate under the age of eighteen (18) years who, in the opinion of the Department of Correction and the division, is more suited and adaptable by age, physical size, and temperament to the programs of the Department of Human Services.

(2)(A) Inmates transferred to the division shall be segregated from the general delinquency population housed at the division.

(B) In the event that a youth violates the rules of the division's program or facility or is otherwise not amenable to the division's rehabilitative efforts, the division may return the inmate to the Department of Correction.

(3) All inmates transferred to the division under this subsection shall be returned to the Department of Correction on their eighteenth birthdays.

History. Acts 1975, No. 280, § 902; 1985, No. 982, § 1; A.S.A. 1947, § 41-902; Acts 1999, No. 1192, § 11; 2001, No. 559, § 9.

5-17-101. Death threat concerning a school employee or student.

(a)(1) A person commits the offense of communicating a death threat concerning a school employee or student if:

(A) The person communicates to any other person a threat to cause the death of a school employee or student;

(B) The threat involves the use of a firearm or other deadly weapon;

(C) A reasonable person would believe the person making the threat intends to carry out the threat;

(D) The person making the threat purposely engaged in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of the threatened act; and

(E) There is a close temporal relationship between the threatened act and the substantial step.

(2) Conduct is not a substantial step under this section unless it is strongly corroborative of the person's criminal purpose.

(3) Communicating a death threat concerning a school employee or student is a Class D felony.

(b) For purpose of this section, "school" means any:

(1) Elementary School, junior high school, or high school;

(2) Technical institute or post-secondary vocational-technical school; or

(3) Two-year or four-year college or university.

History. Acts 2001, No. 1046, §§ 1, 2.

5-27-206. Parental responsibility for student's firearm possession.

(a) As used in this section:

(1) "Firearm" means:

(A) Any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable; or

(B) Components that can readily be assembled into such a device; and

(2) "Parent" means a parent, stepparent, legal guardian, or person in loco parentis or who has legal custody of a student pursuant to a court order and with whom the student resides.

(b) When a parent of a minor knows that the minor is in illegal possession of a firearm in or upon the premises of a public or private school, in or on the school's athletic stadium or other facility or building where school sponsored events are conducted, or in a public park, playground, or civic center and the parent or guardian fails to prevent the possession or fails to report the possession to the appropriate school or law enforcement officials, the parent shall be guilty of a Class B misdemeanor.

History. Acts 1999, No. 1149, §§ 1, 2.

5-27-220. Contributing to the delinquency of a juvenile.

(a) Any person who shall willfully cause, aid, or encourage any person under eighteen (18) years of age to do or perform any act which, if done or performed, would make such person under eighteen (18) years of age a "delinquent juvenile" or "juvenile in need of supervision" within the meaning of this section and §§ 9-27-301 - 9-27-361, shall be guilty of a misdemeanor.

(b) The judge of the juvenile court shall have power to issue a bench warrant for the arrest of an adult where there is probable cause to believe the adult is committing an offense under this section, returnable to either the municipal court or the circuit court of the county in which the offense was committed.

(c) Any indictment or information under this section shall state the specific act(s) the defendant is alleged to have committed.

(d) Any person convicted of a violation of this section may be punished by imprisonment for not less than sixty (60) days nor more than one (1) year, and by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500). However, the court may suspend or postpone enforcement of all, or any part, of the sentence or fine levied under this section if, in the judgment of the court, the suspension or postponement is in the best interest of the juvenile so caused, aided, or encouraged.

History. Acts 1975, No. 451, § 45; A.S.A. 1947, § 45-445.

5-27-227. Providing minors with tobacco products and cigarette papers - Purchase, use, or possession of tobacco products and cigarette papers by minors prohibited - Placement of tobacco vending machines.

(a) It shall be unlawful for any person to give, barter, or sell to a minor under eighteen (18) years of age:

(1) Tobacco in any form; or

(2) Cigarette papers.

(b) It shall be unlawful for any person under eighteen (18) years of age:

(1) To use or possess, unless acting as an agent of the minor's employer within the scope of employment:

(A) Tobacco in any form; or

(B) Cigarette papers;

(2) To purchase or attempt to purchase:

(A) Tobacco in any form; or

(B) Cigarette papers; or

(3) For the purpose of obtaining or attempting to obtain tobacco in any form or cigarette papers, to:

(A) Use any falsified identification; or

(B) Use any identification other than his or her own.

(c)(1) It shall not be an offense under subdivisions (b)(1) or (2) of this section if the minor was acting at the direction of an employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of tobacco in any form or cigarette papers to such minors.

(2) All minors used in this manner by a governmental agency shall display the appearance of a person under eighteen (18) years of age.

(3)(A) The person under eighteen (18) years of age, if questioned by the retailer or the agent or employee of the retailer about his or her

age, shall state his or her actual age and shall present a true and correct identification if verbally asked to present it.

(B) Any failure on the part of the person under eighteen (18) years of age to provide true and correct identification, if verbally asked for it, shall be a defense to any action pursuant to this section or a civil action under § 26-57-257.

(4) No minor shall be subject to arrest or search by any law enforcement officer merely on the grounds that the minor has or may have possession of tobacco or cigarette papers.

(d) No person shall engage or direct a person under eighteen (18) years of age to violate any provision of this section for purposes of determining compliance with provisions of this section unless such person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and such person is:

(1) An officer having authority to enforce the provisions of this section;

(2) An employee of the Arkansas Tobacco Control Board or a prosecuting attorney;

(3) An authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with this section;

(4) An employee or authorized representative of the Department of Health;

(5) An employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with the provisions of this section.

(e) Any person who sells tobacco in any form or cigarette papers shall have the right to deny the sale of any such tobacco in any form or cigarette papers to any person.

(f) It shall be unlawful for any person who has been issued a permit or a license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to fail to display prominently at each retail sales counter or each vending machine a sign that meets the following requirements:

(1) The sign shall contain in red lettering at least one-half inch (1/2") high on a white background, "IT IS A VIOLATION OF THE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD TO OR PURCHASED BY A PERSON UNDER THE AGE OF 18"; and

(2) The sign shall include a depiction of a pack of cigarettes at least two inches (2") high defaced by a red diagonal diameter of a surrounding red circle.

(g) It shall be unlawful for any manufacturer whose tobacco products are distributed in this state and any person who has been issued a permit or license under the Arkansas

Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to distribute free samples of any tobacco product or coupons that entitle the holder of the coupon to any free sample of any tobacco product:

(1) In or on any public street or sidewalk within five hundred feet (500') of any playground, public school, or other facility when such facility is being used primarily by persons under eighteen (18) years of age for recreational, educational, or other purposes; or

(2) To any person under eighteen (18) years of age.

(h)(1)(A) Except as provided in subdivision (h)(2) of this section, it shall be unlawful for any person who owns or leases tobacco vending machines to place a tobacco vending machine in a public place.

(B) For purposes of subdivision (h)(1)(A) of this section, "public place" means a publicly or privately owned place to which the public or substantial numbers of people have access.

(2) Tobacco vending machines may be placed in:

(A) Restricted areas within a factory, business, office, or other structure to which members of the general public are not given access;

(B) Permitted premises which have a permit for the sale or dispensing of alcoholic beverages for on-premises consumption which restrict entry to persons age twenty-one (21) or older; or

(C) Places where the vending machine is under the supervision of the owner or an employee of the owner.

(i)(1) Any retail permit holder or license holder who violates any of the provisions in this section shall be deemed guilty of a violation and subject to the following penalties:

(A) If the alleged violator has received a notice of an alleged violation from the Arkansas Tobacco Control Board or other agency or official with the authority to assess penalties containing the information specified in this subchapter, a fine not to exceed two hundred fifty dollars ($250) for a first violation within a forty-eight (48) month period;

(B)(i) A fine not to exceed five hundred dollars ($500) for a second violation within a forty-eight (48) month period; and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed two (2) days;

(C)(i) A fine not to exceed one thousand dollars ($1,000) for a third violation within a forty-eight (48) month period; and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed seven (7) days;

(D)(i) A fine not to exceed two thousand dollars ($2,000) for a fourth or subsequent violation within a forty-eight (48) month period; and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed fourteen (14) days; and

(E) For a fifth violation within a forty-eight (48) month period, the license or permit enumerated in § 26-57-219 may be revoked.

(2) Upon any revocation or suspension of a permit or license under the provisions of subdivision (i)(1) of this section, the person shall not be issued any new permit or license to distribute or sell tobacco products during the period of suspension or revocation.

(j)(1) A notice of alleged violation of this section shall be given to the holder of a retail permit or license within ten (10) days of the alleged violation.

(2)(A) The notice must contain the date and time of the alleged violation.

(B)(i) It shall also include either the name of the person making such alleged sale or information reasonably necessary to determine the location in the store that allegedly made such sale.

(ii) Such information should include where appropriate, but not be limited to the:

(a) Cash register number;

(b) Physical location of the sale in the store; and

(c) If possible, the lane or aisle number.

(k) Notwithstanding the provisions of subsection (i) of this section, the court shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes or tobacco products to persons under the age of eighteen (18) years;

(2) The business has informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to persons under the age of eighteen (18) years;

(3) The business has required employees to verify the age of cigarette or tobacco product customers by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) That the appearance of the purchaser of the tobacco in any form or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(l) Any cigarettes or tobacco products found in the possession of a person under eighteen (18) years of age may be confiscated.

(m) An employee of a permit holder who violates § 5-27-227 shall be subject to a fine not to exceed one hundred dollars ($100) per violation.

(n) The person convicted of violating any provision of this section whose permit or license to distribute or sell tobacco products is suspended or revoked shall, upon conviction, surrender to the court all such permits or licenses and the court shall transmit those permits and licenses to the Director of the Department of Finance and Administration and instruct the Director of the Arkansas Tobacco Control Board:

(1) To suspend or revoke, and not renew, the person's permit or license to distribute or sell tobacco products; and

(2) Not to issue any new permit or license to that person for the period of time determined by the court in accordance with this section.

History. Acts 1929, No. 152, § 26; Pope's Dig., § 13557; A.S.A. 1947, § 41-2465; Acts 1991, No. 543, § 1; 1997, No. 1337, § 24; 1999, No. 1591, §§ 1, 3.

5-27-501. Purposes.

(a) The primary purpose of this subchapter is to prohibit the production, sale, or distribution of fraudulent or altered identification documents to persons under the age of twenty-one (21) to prevent the use of such documents to unlawfully purchase alcoholic beverages or other substances or materials restricted for adult purchase or possession in accordance with existing law.

(b) The secondary purpose of this subchapter is to assign criminal liability to those persons under age twenty-one (21) utilizing fraudulent identification documents for the

purpose of unlawfully purchasing alcoholic beverages or other substances or materials restricted for adult purchase or possession in accordance with existing law.

History. Acts 1991, No. 567, § 1.

5-27-502. Manufacturing or altering personal identification document unlawful.

(a) It shall be unlawful for a person to:

(1) Manufacture or produce fraudulent personal identification documents for the purpose of providing a person under age twenty-one (21) identification which can be used for the purpose of purchasing alcoholic beverages or other substances or materials restricted for adult purchase or possession in accordance with existing law;

(2) Alter a personal identification document for the purpose of providing a person under age twenty-one (21) false identification which can be used for the purpose of purchasing alcoholic beverages or other substances or materials restricted for adult purchase or possession in accordance with existing law; or

(3) Sell or otherwise distribute such fraudulent personal identification documents to a person under age twenty-one (21).

(b)(1) A person who violates this section shall be deemed guilty of a Class C felony.

(2) A second or subsequent violation of this section shall be a Class B felony.

History. Acts 1991, No. 567, § 2.

5-27-503. Possession of fraudulent or altered personal identification document unlawful.

(a) It shall be unlawful for:

(1) A person to possess a fraudulent or altered personal identification document for the purpose of providing a person under age twenty-one (21) identification which can be used for the purpose of purchasing alcoholic beverages or other substances or materials restricted for adult purchase or possession in accordance with existing law;

(2) A person under age twenty-one (21) to possess a fraudulent or altered personal identification document which can be used for the purpose of purchasing alcoholic beverages or other substances or materials restricted for adult purchase or possession in accordance with existing law; or

(3) A person under age twenty-one (21) to attempt to use a fraudulent or altered personal identification document for the purpose of purchasing alcoholic beverages illegally or other materials or substances restricted to adult purchase or possession under existing law.

(b)(1) A person who violates this section shall be deemed guilty of a Class B misdemeanor.

(2) A second or subsequent violation of this section shall be a Class A misdemeanor.

History. Acts 1991, No. 567, § 3.

5-27-504. Denial of driving privileges.

(a)(1) Whenever a person who is less than eighteen (18) years of age pleads guilty, nolo contendere, or is found guilty of violation of § 5-27-503, or is found by a juvenile court to have committed such an offense, the court shall prepare and transmit to the Department of Finance and Administration within twenty-four (24) hours after the plea or finding an order of denial of driving privileges for the minor.

(2) In cases of extreme and unusual hardship, the order may provide for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school.

(b) Upon receipt of an order of denial of driving privileges under this subchapter, the Department of Finance and Administration shall suspend the motor vehicle operator's license of the minor for twelve (12) months or until the minor reaches eighteen (18) years of age, whichever period of time is shortest.

(c) The penalties prescribed in this section shall be in addition to the penalties prescribed by § 5-27-503.

History. Acts 1991, No. 567, § 4.

5-54-132. Projecting a laser light on a law enforcement officer.

(a) It shall be unlawful for any person to knowingly cause a laser light beam, colored light beam or other targeting, pointing, or spotting light beam to be projected, displayed or shined on a law enforcement officer while in the performance of his duties.

(b) Any person violating the provisions of this section shall be guilty of a Class A misdemeanor.

History. Acts 1999, No. 1271, § 1.

5-60-112. Misconduct on bus - In general.

(a) As used in this section, unless the context otherwise requires:

(1) "Bus" means any passenger bus or coach or other motor vehicle having a seating capacity of not less than fifteen (15) passengers operated by a bus transportation company for the purpose of carrying passengers or cargo for hire, but not to include a bus or coach utilized exclusively to transport children to and from schools;

(2) "Bus transportation company" or "company" means any person, group of persons, or corporation providing for-hire transport to passengers or cargo by bus upon the highways of this state, but not to include a company utilizing buses transporting children to and from school. These terms shall also include bus transportation facilities owned or operated by local public bodies, municipalities, public corporations, boards, and commissions, except school districts established under the laws of this state;

(3) "Charter" means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with a bus transportation company's tariff, have acquired the exclusive use of a bus to travel together as a group to a specified destination;

(4) "Passenger" means any person served by the transportation company. This term shall also include persons accompanying or meeting another who is transported by a company and any person shipping or receiving cargo.

(b) It is unlawful, while on a bus, for any person:

(1) To threaten a breach of the peace or use any obscene, profane, or vulgar language;

(2) To be under the influence of alcohol or unlawfully under the influence of a controlled substance or to ingest or have in his possession any controlled substance unless properly prescribed by a physician or medical facility, or to drink intoxicating liquor of any kind in or upon any passenger bus, except a chartered bus;

(3) To fail to obey a reasonable request or order of a bus driver or any authorized company representative.

(c) If any person shall violate any provision of subsection (b) of this section, the driver of the bus or person in charge may stop it at the place where the offense is committed or at the next regular or convenient stopping place of the bus and require the person to leave the bus.

(d) Any person violating any provision of subsection (b) of this section is deemed guilty of a Class C misdemeanor.

History. Acts 1983, No. 688, §§ 1, 2; A.S.A. 1947, §§ 41-2924, 41-2925.

5-60-113. Using abusive language to school bus driver.

(a) It is unlawful for any person or persons to threaten, curse, or use abusive language to a school bus driver in the presence of students in this state.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100).

History. Acts 1977, No. 814, §§ 1, 2; A.S.A. 1947, §§ 41-2922, 41-2923.

5-60-121. Sale of laser light to minor.

(a) It is unlawful to sell a hand-held laser pointer to a person under eighteen (18) years of age.

(b) Any person who violates this section is guilty of a violation punishable by a fine of one hundred dollars ($100).

History. Acts 1999, No. 382, § 1.

5-60-122. Possession of laser light by minor.

(a) It is unlawful for a person under eighteen (18) years of age to possess a hand-held laser pointer without the supervision of a parent, guardian, or teacher.

(b) The hand-held laser pointer shall be seized by a law enforcement officer as contraband.

History. Acts 1999, No. 1408, § 1.

5-64-403. Fraud - Drug paraphernalia - Criminal penalties.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by § 5-64-307;

(2) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or theft;

(3) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under subchapters 1-6 of this chapter, or any record required to be kept by subchapters 1-6 of this chapter; or

(4) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(5)(i) To agree, consent, or in any manner offer to unlawfully sell, furnish, transport, administer, or give any controlled substance to any person, or to arrange for any of the above, and then to substitute a non-controlled substance in lieu of the controlled substance bargained for.

(ii) The proffer of a controlled substance shall create a rebuttable presumption of intent to deliver which does not require additional showing of specific intent to substitute a noncontrolled substance.

(b)(1) Any person who violates any provision of subdivisions (a)(1) - (4) of this section is guilty of a Class C felony.

(2) Any person who violates subdivision (a)(5) of this section with respect to:

(i) A noncontrolled substance represented to be a controlled substance classified in Schedules I or II, which is a narcotic drug, is guilty of a Class B felony;

(ii) Any other noncontrolled substance represented to be a controlled substance classified in Schedules I, II, or III, is guilty of a Class C felony;

(iii) A noncontrolled substance represented to be a controlled substance classified in Schedule IV, is guilty of a Class C felony;

(iv) A noncontrolled substance represented to be a controlled substance classified in Schedule V, is guilty of a Class C felony;

(v) A noncontrolled substance represented to be a controlled substance classified in Schedule VI, is guilty of a Class D felony.

(c)(1)(A)(i) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal,

inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of subchapters 1-6 of this chapter.

(ii) A violation of the subdivision (c)(1)(A)(i) is a Class A misdemeanor.

(B) Any person who violates this section in the course of and in furtherance of a felony violation of subchapters 1-6 of this chapter is guilty of a Class C felony.

(2)(A) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of subchapters 1-6 of this chapter. Any person who violates this subdivision (c)(2)(A) of the section is guilty of a Class A misdemeanor.

(B) Any person who violates subdivision (c)(2)(A) of this section in the course of and in furtherance of a felony violation of subchapters 1-6 of this chapter is guilty of a Class C felony.

(3)(A) Any person eighteen (18) years of age or over who violates subdivision (c)(2) of this section immediately preceding by delivering drug paraphernalia in the course of and in furtherance of a felony violation of subchapters 1-6 of this chapter to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a Class B felony.

(B) Delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is a Class A misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of counterfeit substances or of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a Class C felony.

(5) [Expires April 30, 2002.] It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture methamphetamine in violation of this chapter. Any person who pleads guilty, nolo contendere, or is found guilty of violating the provisions of this subsection shall be guilty of a Class B felony and shall be fined an amount not exceeding fifteen thousand dollars ($15,000).

History. Acts 1971, No. 590, Art. 4, § 3; 1972 (Ex Sess.), No. 67, § 2; 1977, No. 557, § 3; 1981, No. 78, § 2; 1981, No. 116, §§ 2, 3; 1981, No. 117, § 1; 1983, No. 787, § 6; A.S.A. 1947, § 82-2619; Acts 1999, No. 326, § 1; 1999, No. 1268, § 3; 2001, No. 1451, § 1.

5-64-406. Distribution to minors.

Any person eighteen (18) years of age or over who violates § 5-64-401 (a) by distributing a controlled substance listed in Schedules I or II which is a narcotic drug to a person under eighteen (18) years of age who is at least three (3) years his junior is punishable by the fine authorized by § 5-64-401 (a)(1)(i), by a term of imprisonment of up to twice that authorized by § 5-64-401 (a)(1)(i), or by both. Any person eighteen (18) years of age or over who violates § 5-64-401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen (18) years of age who is at least three (3) years his junior is punishable by the fine authorized by § 5-64-401 (a)(1)(ii), (iii), or (iv), by a term of imprisonment up to twice that authorized by § 5-64-401 (a)(1)(ii), (iii), or (iv), or both.

History. Acts 1971, No. 590, Art. 4, § 6; A.S.A. 1947, § 82-2622.

5-64-710. Denial of driving privileges for minor - Restricted permit.

(a) As used in this section:

(1) "Drug offense" means the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Uniform Controlled Substances Act, § 5-64-101 et seq., or the operation of a motor vehicle under the influence of such a substance;

(2) "Substance, the possession of which is prohibited under the Uniform Controlled Substances Act" or "substance", as such phrase and term are utilized in subdivision (a)(1) of this section, means a controlled or counterfeit chemical, as those terms are defined in subsections 102 (6) and (7) of the Comprehensive Drug Abuse Prevention and Control Act of 1970; and

(3) "Motor vehicle", as such term is utilized in subdivision (a)(1) of this section, means any vehicle which is self-propelled by which persons or things may be transported upon a public highway and is registered in the State of Arkansas or of the type subject to registration in Arkansas, provided, such term shall also mean and include any "motorcycle", "motor-driven cycle", or "motorized bicycle", as such terms are defined in § 27-20-101 and any "commercial motor vehicle" as defined in § 27-23-103.

(b)(1)(A) Whenever a person who is less than eighteen (18) years of age pleads guilty or nolo contendere to, or is found guilty of, driving while intoxicated under § 5-65-101 et seq., or of any criminal offense involving the illegal possession or use of controlled substances, or of any drug offense, in this state or any other state, or is found by a juvenile court to have committed such an offense, the court having jurisdiction of such matter, including any federal court, shall prepare and transmit to the Department of Finance and Administration an order of denial of driving privileges for the minor.

(B) Courts within the State of Arkansas shall prepare and transmit all such orders within twenty-four (24) hours after the plea or finding to the department.

(C) Courts outside Arkansas having jurisdiction over any such person holding driving privileges issued by the State of Arkansas shall prepare and transmit such orders pursuant to agreements or arrangements entered into between that state and the Director of the Department of Finance and Administration.

(D) Such arrangements or agreements may also provide for the forwarding by the department of orders issued by courts within this state to the state wherein any such person holds driving privileges issued by that state.

(2) For any such person holding driving privileges issued by the State of Arkansas, courts within this state in cases of extreme and unusual hardship may provide in an order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school.

(c) Penalties prescribed in this section and § 27-16-914 shall be in addition to all other penalties prescribed by law for the offenses covered by this section and § 27-16-914.

(d) In regard to any offense involving illegal possession under this section, it shall be a defense if the controlled substance is the property of an adult who owns the vehicle.

History. Acts 1989 (3rd Ex. Sess.), No. 93, §§ 1, 3, 4; 1993, No. 1257, § 1.

5-65-116. Denial of driving privileges for minor - Restricted permit.

(a) As used in this section, the term "drug offense" shall have the same meaning ascribed to that term as provided in § 5-64-710 (a)(1).

(b)(1)(A) Whenever a person who is less than eighteen (18) years of age pleads guilty or nolo contendere to, or is found guilty of, driving while intoxicated under § 5-65-101 et seq., or of any criminal offense involving the illegal possession or use of controlled substances, or of any drug offense, in this state or any other state, or is found by a juvenile court to have committed such an offense, the court having jurisdiction of such matter, including any federal court, shall prepare and transmit to the Department of Finance and Administration an order of denial of driving privileges for the minor.

(B) Courts within the State of Arkansas shall prepare and transmit all such orders within twenty-four (24) hours after the plea or finding to the department.

(C) Courts outside Arkansas having jurisdiction over any such person holding driving privileges issued by the State of Arkansas shall prepare and transmit such orders pursuant

to agreements or arrangements entered into between that state and the Director of the Department of Finance and Administration.

(D) Such arrangements or agreements may also provide for the forwarding by the department of orders issued by courts within this state to the state wherein any such person holds driving privileges issued by that state.

(2) For any such person holding driving privileges issued by the State of Arkansas, courts within this state in cases of extreme and unusual hardship may provide in an order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school.

(c) Penalties prescribed in this section and § 27-16-914 shall be in addition to all other penalties prescribed by law for the offenses covered by this section and § 27-16-914.

(d) In regard to any offense involving illegal possession under this section, it shall be a defense if the controlled substance is the property of an adult who owns the vehicle.

History. Acts 1989 (3rd Ex. Sess.), No. 93, §§ 1, 3, 4; 1993, No. 1257, § 2.

5-65-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Influence" means being controlled or affected by the ingestion of an alcoholic beverage or similar intoxicant, or any combination thereof, to such a degree that the driver's reactions, motor skills, and judgment are altered or diminished, even to the slightest scale, and the underage driver, therefore, due to inexperience and lack of skill, constitutes a danger of physical injury or death to himself and other motorists or pedestrians;

(2) "Underage" means any person who is under the age of twenty-one (21) years old and therefore may not legally consume alcoholic beverages in Arkansas.

History. Acts 1993, No 863, § 2.

5-65-303. Conduct proscribed.

(a) It is unlawful and punishable as provided in this subchapter for any underage person to operate or be in actual physical control of a motor vehicle while under the influence of an alcoholic beverage or similar intoxicant.

(b) It is unlawful and punishable as provided in this subchapter for any underage person to operate or be in actual physical control of a motor vehicle if at that time there was an

alcohol concentration of two-hundreths (0.02) but less than eight-hundreths (0.08) in the person's breath or blood as determined by a chemical test of the person's blood or breath or other bodily substance.

History. Acts 1993, No. 863, § 3; 2001, No. 561, § 14.

5-65-304. Seizure, suspension, and revocation of license - Temporary permits.

(a) At the time of arrest for violating § 5-65-303, the arresting officer shall seize the motor vehicle operator's license of the underage person arrested and issue to such person a temporary driving permit as provided by § 5-65-402.

(b)(1) The Office of Driver Services of the Department of Finance and Administration shall suspend or revoke the driving privileges of the arrested person under the provisions of § 5-65-402 and the arrested person shall have the same right to hearing and judicial review as provided under § 5-65-402.

(2) The suspension or revocation shall be as follows:

(A) Suspension for ninety (90) days for the first offense of violating § 5-65-303;

(B) Suspension for one (1) year for the second offense of violating § 5-65-303; and

(3)(A) Revocation for the third or subsequent offense occurring while the person is underage.

(B) Revocation shall be until the underage person reaches the age of twenty-one (21) or for a period of three (3) years, whichever is longer.

(c) In order to determine the number of previous offenses to consider when suspending or revoking the arrested person's driving privileges, the Office of Driver Services shall consider as a previous offense:

(1) Any convictions which occurred prior to July 1, 1996, for the offenses of:

(A) Operating or being in actual physical control of a motor vehicle while intoxicated or in violation of § 5-65-103; or

(B) Refusing to submit to a chemical test;

(2) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring on or after July 1, 1996, where the person was subsequently convicted of the criminal charges;

(3) Any convictions for violating § 5-65-303 or § 5-65-310 prior to July 30, 1999; and

(4) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-303 or § 5-65-310 occurring on or after July 30, 1999, where the person was subsequently convicted of the criminal charges.

(d)(1) The Office of Driver Services shall charge a fee of twenty-five dollars ($25.00) for reinstating a driver's license suspended because of a violation of § 5-65-303 or § 5-65-310.

(2) Forty percent (40%) of the revenues derived from this fee shall be deposited in the State Treasury as special revenues and credited to the Public Health Fund to be used exclusively for the Department of Health's Blood Alcohol Program.

History. Acts 1993, No. 863, § 4; 1999, No. 1077, § 16.

5-65-305. Fines.

(a) Any person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-303 or § 5-65-310 shall be fined:

(1) No less than one hundred dollars ($100) and not more than five hundred dollars ($500) for the first offense;

(2) No less than two hundred dollars ($200) and not more than one thousand dollars ($1,000) for the second offense occurring underage; and

(3) No less than five hundred dollars ($500) and not more than two thousand dollars ($2,000) for the third or subsequent offense occurring underage.

(b) For the purpose of determining an underage person's fines under this subchapter, an underage person who has one (1) or more previous convictions or suspensions for a violation of § 5-65-103 or § 5-65-205 shall be deemed to have a conviction for a violation of this subchapter for each conviction for driving while intoxicated.

History. Acts 1993, No. 863, § 5; 1999, No. 1077, § 17.

5-65-306. Public service work.

(a) Any underage person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-303 or § 5-65-310 shall be ordered by the court to perform public service work of the type and for the duration as deemed appropriate by the court.

(b) The period of community service shall be for:

(1) No fewer than thirty (30) days for a second offense of violating § 5-65-303; and

(2) No fewer than sixty (60) days for a third or subsequent offense of violating § 5-65-303.

History. Acts 1993, No. 863, § 6; 1999, No. 1077, § 18.

5-65-307. Alcohol and driving education program.

(a)(1) Any underage person who has his or her driving privileges suspended, revoked, or denied for violating § 5-65-303, shall, in addition to other penalties provided in this chapter, be required to complete an alcohol and driving education program for underage drivers as prescribed and approved by the Highway Safety Program.

(2) The Highway Safety Program shall approve only those programs in alcohol and driving education which are targeted at the underage driving group and are intended to intervene and prevent repeat occurrences of driving under the influence or driving while intoxicated.

(3) The alcohol and driving education program may collect a program fee of up to fifty dollars ($50.00) per enroller to offset program costs.

(4) A person ordered to complete an alcohol and driving education program under this section may be required to pay, in addition to the costs collected for the program, a fee of up to twenty-five dollars ($25.00) to offset the additional costs associated with reporting requirements under this subchapter.

(5) An approved alcohol and driving education program shall report semiannually to the Highway Safety Program all revenue derived from these fees.

(b) Prior to reinstatement of a driver's license suspended or revoked under this subchapter, the driver shall furnish proof of attendance at and completion of the alcohol and driving education program.

(c) The Highway Safety Program is authorized to promulgate rules and regulations reasonably necessary to carry out the purposes of this section regarding the approval and monitoring of the alcohol and driving education programs.

(d)(1)(A) A person whose license is suspended or revoked for violating

§ 5-65-303 or § 5-65-310 shall:

(i)(a) Furnish proof of attendance at and completion of the alcoholism treatment or education program before reinstatement of his or her suspended or revoked driver's license; and

(b) Pay any fee for reinstatement required under § 5-65-119 or § 5-65-304; or

(ii) Furnish proof of dismissal or acquittal of the charge on which the suspension, or revocation is based.

(B) An application for reinstatement shall be made to the Office of Driver Services.

(2) Even if a person has filed a de novo petition for review pursuant to § 5-65-402, the person shall be entitled to reinstatement of driving privileges upon complying with this subsection and shall not be required to postpone reinstatement until the disposition of the de novo review in circuit court has occurred.

(3)(A) A person suspended under this chapter may enroll in an alcohol education program prior to disposition of the offense by the municipal or circuit court but shall not be entitled to any refund of fees paid if the charges are dismissed or if the person is acquitted of the charges.

(B) A person who enrolls in an alcohol education program shall not be entitled to any refund of fees paid if the person is subsequently acquitted.

History. Acts 1993, No. 863, § 7; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4; 1999, No. 1077, § 19.

5-65-308. No probation prior to adjudication of guilt.

(a)(1) Section 16-93-301 et seq. allows judges of circuit and municipal courts to place on probation first offenders who plead guilty or nolo contendere prior to an adjudication of guilt, and, upon successful completion of probation, the judge may discharge the accused without a court adjudication of guilt and expunge the record.

(2) No circuit judge or municipal judge may utilize the provisions of § 16-93-301 et seq. in instances where an underage person is charged with violating § 5-65-303.

(b) Every magistrate or judge of a court shall keep or cause to be kept a record of every violation of this subchapter presented to that court and shall keep a record of every

official action by that court in reference thereto, including, but not limited to, a record of every finding of guilt, plea of guilty or nolo contendere, or judgment of acquittal, and the amount of fine and other sentence.

(c) Within thirty (30) days after sentencing a person who has been found guilty or pleaded guilty or nolo contendere on a charge of violating any provision of this subchapter, every magistrate of the court or clerk of the court shall prepare and immediately forward to the Office of Driver Services an abstract of the record of the court covering the case in which the person was found guilty or pleaded guilty or nolo contendere, which abstract shall be certified by the person so required to prepare it to be true and correct.

(d) The abstract shall be made upon a form furnished by the Office of Driver Services and shall include:

(1) The name and address of the party charged;

(2) The number, if any, of the driver's license of the party charged;

(3) The registration number of the vehicle involved;

(4) The date of hearing;

(5) The plea;

(6) The judgment; and

(7) The amount of the fine and other sentence, as the case may be.

History. Acts 1993, No. 863, § 8.

5-65-309. Implied consent.

(a) Any underage person who operates a motor vehicle or is in actual physical control of a motor vehicle in this state shall be deemed to have given consent, subject to the provisions of § 5-65-203, to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the alcohol or controlled substance content of his or her blood if:

(1) The driver is arrested for any offense arising out of acts alleged to have been committed while the underage person was driving while under the influence or driving while there was one-fiftieth of one percent (0.02%) but less than one-tenth of one percent (0.10%) of alcohol in the person's blood; or

(2) The underage person is involved in an accident while operating or in actual physical control of a motor vehicle; or

(3) The underage person is stopped by a law enforcement officer who has reasonable cause to believe that the person, while operating or in actual physical control of a motor vehicle, is under the influence or has an alcohol concentration of two-hundredths (0.02) but less then eight-hundredths (0.08) in his or her breath or blood.

(b) Any underage person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this section, and the tests may be administered subject to the provisions of § 5-65-203.

History. Acts 1993, No. 863, § 9; 2001, No. 561, § 15.

5-65-310. Refusal to submit.

(a) If an underage person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency, as provided in § 5-65-309, none shall be given, and the person's driver's license shall be seized by the law enforcement officer and the officer shall immediately deliver to the person from whom the license was seized a temporary driving permit as provided by § 5-65-402.

(b)(1) The Office of Driver Services of the Department of Finance and Administration shall suspend or revoke the driving privileges of the arrested person under § 5-65-402.

(2) The director shall suspend the person's driving privileges as follows:

(A) Suspension for ninety (90) days for a first offense under this section;

(B) Suspension for one (1) year for a second offense under this section; and

(C)(i) Revocation for the third or subsequent offense occurring while the person is underage.

(ii) Revocation shall be until the underage person reaches the age of twenty-one (21) or for a period of three (3) years, whichever is longer.

(c) In order to determine the number of previous offenses to consider when suspending or revoking the arrested person's driving privileges, the Office of Driver Services shall consider as a previous offense:

(1) Any conviction for an offense which occurred prior to July 1, 1996, of:

(A) Operating or being in actual physical control of a motor vehicle while intoxicated or in violation of § 5-65-103; or

(B) Refusing to submit to a chemical test;

(2) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-103 or violation of § 5-65-205 occurring on or after July 1, 1996, where the person was subsequently convicted of the criminal charges;

(3) Any convictions for violating § 5-65-303 or § 5-65-310 prior to July 30, 1999; and

(4) Any suspension or revocation of driving privileges for arrests for a violation of § 5-65-303 or § 5-65-310 occurring on or after July 30, 1999, where the person was subsequently convicted of the criminal charges.

(d)(1) If the person is a resident without a license or permit to operate a motor vehicle in this state, in addition to any other penalties provided for in this section, the Office of Driver Services shall deny to that person the issuance of a license or permit for a period of six (6) months for a first offense.

(2) For a second or subsequent offense by a resident without a license or permit to operate a motor vehicle, in addition to any other penalties provided for in this section, the Office of Driver Services shall deny to that person the issuance of a license or permit for a period of one (1) year.

(e) When a nonresident's privilege to operate a motor vehicle in this state has been suspended, the Office of Driver Services shall notify the office of issuance of that person's nonresident motor vehicle license of action taken by the Office of Driver Services.

(f)(1) The Office of Driver Services shall charge a fee of twenty-five dollars ($25.00) for reinstating a driver's license suspended or revoked for a violation of this section.

(2) Forty percent (40%) of the revenues derived from this fee shall be deposited in the State Treasury as special revenues and credited to the Public Health Fund to be used exclusively for the Department of Health's Blood Alcohol Program.

History. Acts 1993, No. 863, § 10; 1999, No. 1077, § 20.

5-65-311. Relationship to other laws.

(a) Penalties prescribed in this subchapter for underage driving under the influence shall be in addition to all other penalties prescribed by law for the offenses under other laws of the State of Arkansas.

(b) For the purposes of this subchapter, there is no presumption, as there is found in § 5-65-206, that a person is not under the influence of an intoxicating substance, such as alcohol or a similar intoxicant, if the person's alcohol concentration is four hundredths (0.04%) of one percent or less.

(c) The administration of the chemical tests for breath or blood alcohol, the instruments used to administer those tests, the procedures used to calibrate and maintain those machines and instruments, and the use of the test results as evidence shall be the same as for those tests and instruments used for testing breath or blood alcohol concentrations under the Omnibus DWI Act, § 5-65-101 et seq.

(d) If there is evidence of an alcohol concentration of more than four-hundredths (0.04)but less than eight-hundredths (0.08) in a person's blood, breath, or other bodily substances, this fact shall not preclude a person under twenty-one (21) years of age from being prosecuted for driving while intoxicated under the Omnibus DWI Act, § 5-65-101 et seq.

History. Acts 1993, No. 863, § 11; 2001, No. 561, § 16.

5-71-210. Communicating a false alarm.

(a) A person commits the offense of communicating a false alarm if he purposely initiates or circulates a report of a present, past, or impending bombing, fire, offense, catastrophe, or other emergency knowing that the report is false or baseless and knowing that it is likely:

(1) To cause action of any sort by an official or volunteer agency organized to deal with emergencies; or

(2) To place any person in fear of physical injury to himself or another person or of damage to his property or that of another person; or

(3) To cause total or partial evacuation of any occupiable structure, vehicle, or vital public facility.

(b) Communicating a false alarm is a Class D felony if physical injury to a person results. Otherwise, it is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2911; A.S.A. 1947, § 41-2911.

5-73-109. Furnishing a deadly weapon to a minor.

(a) A person commits the offense of furnishing a deadly weapon to a minor when he sells, barters, leases, gives, rents, or otherwise furnishes a firearm or other deadly weapon to a minor without the consent of a parent, guardian, or other person responsible for general supervision of his welfare.

(b) Furnishing a deadly weapon to a minor is a Class A misdemeanor, unless the deadly weapon is:

(1) A handgun;

(2) A sawed-off or short-barrelled shotgun, as defined in § 5-1-102 (21);

(3) A sawed-off or short-barrelled rifle, as defined in § 5-1-102 (22);

(4) A firearm that has been specially made or specially adapted for silent discharge;

(5) A machine gun;

(6) An explosive or incendiary device, as defined in § 5-71-301;

(7) Metal knuckles;

(8) A defaced firearm, as defined in § 5-73-107; or

(9) Other implement for the infliction of serious physical injury or death that serves no common lawful purpose, in which case it is a Class B felony.

History. Acts 1975, No. 280, § 3109; A.S.A, 1947, § 41-3109; Acts 1994 (2nd Ex. Sess.), No. 45, § 1.

5-73-110. Disarming minors and mentally defective or irresponsible persons - Disposition of property seized.

(a) Subject to constitutional limitation, nothing in this section and §§ 5-73-101 - 5-73-109 shall be construed to prohibit a law enforcement officer from disarming, without arresting, a minor or person who reasonably appears to be mentally defective or otherwise mentally irresponsible, when that person is in possession of a deadly weapon.

(b) Property seized pursuant to subsection (a) of this section may be:

(1) Returned to the parent, guardian, or other person entrusted with care and supervision of the person so disarmed; or

(2) Delivered to the custody of a court having jurisdiction to try criminal offenses, in which case the court shall:

(A) Treat the property as contraband under §§ 5-5-101 and 5-5-102; or

(B) Issue an order requiring that at a certain time the parent, guardian, or person entrusted with the care and supervision of the person disarmed show cause why the seized property should not be so treated.

(c) Notice of the show cause proceedings may be given in the manner provided for service of criminal summons under Rule 6.3 of Arkansas Rules of Criminal Procedure.

History. Acts 1975, No. 280, § 3110; A.S.A. 1947, § 41-3110.

5-73-119. Handguns - Possession by minor or possession on school property.

(a)(1)(A) No person in this state under the age of eighteen (18) years shall possess a handgun.

(B)(i) A violation of subdivision (a)(1)(A) of this section shall be a Class A misdemeanor.

(ii) A violation of subdivision (a)(1)(A) of this section shall be a Class D felony if the person has previously:

(a) Been adjudicated delinquent for a violation of subdivision (a)(1)(A) of this section; or

(b) Been adjudicated delinquent for any offense which would be a felony if committed by an adult; or

(c) Pleaded guilty or nolo contendere to, or been found guilty of, a felony in circuit court while under the age of eighteen (18) years.

(2)(A) No person in this state shall possess a firearm:

(i) Upon the developed property of the public or private schools, K-12; or

(ii) In or upon any school bus; or

(iii) At a designated bus stop as identified on the route lists published by school districts each year.

(B) A violation of subdivision (a)(2)(A) of this section shall be a Class D felony, and no sentence imposed for violation thereof shall be

suspended or probated or treated as a first offense under § 16-93-301 et seq.

(3)(A) No person in this state shall possess a handgun upon the property of any private institution of higher education or the publicly supported institutions of higher education in this state on or about his person, in a vehicle occupied by him, or otherwise readily available for use with a purpose to employ it as a weapon against a person.

(B) A violation of subdivision (a)(3)(A) of this section shall be a Class D felony.

(b) A "handgun" is a firearm, capable of firing rimfire ammunition or centerfire ammunition, which is designed or constructed to be fired with one (1) hand.

(c) It is a defense to prosecution under this section that at the time of the act of possessing a handgun or firearm:

(1) The person is in his own dwelling or place of business or on property in which he has a possessory or proprietary interest; or

(2) The person is a law enforcement officer, prison guard, or member of the armed forces acting in the course and scope of his official duties; or

(3) The person is assisting a law enforcement officer, prison guard, or member of the armed forces acting in the course and scope of his official duties pursuant to the direction or request of the law enforcement officer, prison guard, or member of the armed forces; or

(4) The person is a licensed security guard acting in the course and scope of his duties; or

(5) The person is hunting game with a handgun or firearm which may be hunted with a handgun or firearm under the rules and regulations of the Arkansas State Game and Fish Commission or is en route to or from a hunting area for the purpose of hunting game with a handgun or firearm; or

(6) The person is a certified law enforcement officer; or

(7) The person is on a journey, unless the person is eighteen (18) years old or less; or

(8) The person is participating in a certified hunting safety course sponsored by the commission or a firearm safety course recognized and approved by the commission or by a state or national non profit organization qualified and experienced in firearm safety; or

(9) The person is participating in a school-approved educational course or sporting activity involving the use of firearms; or

(10) The person is a minor engaged in lawful marksmanship competition or practice or other lawful recreational shooting under the supervision of his parent, or legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis or is traveling to or from this activity with an unloaded handgun or firearm accompanied by his parent, legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis.

History. Acts 1989, No. 649, §§ 1-4; 1993, No. 1166, § 1; 1993, No. 1189, § 4; 1994 (2nd Ex. Sess.), No. 57, § 1; 1994 (2nd Ex. Sess.), No. 58, § 1; 1999, No. 1282, § 1; 2001, No. 592, § 1.

5-73-128. Offenses upon property of public schools.

(a)(1) Whenever a person who is less than nineteen (19) years of age at the time of the commission of the offense pleads guilty or nolo contendere, and the plea is accepted by the court, or is found guilty of any criminal offense under §§ 5-73-101 et seq. or 5-73-201 et seq., provided that the state proves that the offense was committed upon the property of the public schools or in or upon any school bus, or is found by a juvenile court to have committed such an offense, the court shall prepare and transmit to the Department of Finance and Administration within twenty-four (24) hours after the plea or finding an order of denial of driving privileges for the person.

(2) In cases of extreme and unusual hardship, the order may provide for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school.

(b) Upon receipt of an order of denial of driving privileges under this section, the Department of Finance and Administration shall suspend the motor vehicle operator's license of the person for not less than twelve (12) months nor more than thirty-six (36) months.

(c) Penalties prescribed herein shall be in addition to all other penalties prescribed by law for the offenses covered by this section.

History. Acts 1993, No. 264 §§ 1-3, 1993, No. 781, §§ 1-3.

5-73-130. Seizure and forfeiture of firearm - Seizure and forfeiture of motor vehicle - Disposition of property seized.

(a) Whenever a person under eighteen (18) years of age is unlawfully in possession of a firearm, the firearm shall be seized and, after an adjudication of delinquency or a conviction, shall be subject to forfeiture.

(b) Whenever a felon or a person under eighteen (18) years of age is unlawfully in possession of a firearm in a motor vehicle, the motor vehicle shall be subject to seizure and, after an adjudication of delinquency or a conviction, subject to forfeiture.

(c) As used in this section, the term "unlawfully in possession of a firearm" shall not include any act of possession of a firearm which is prohibited only by:

(1) Section 15-43-214, unlawful to possess firearms while hunting deer or turkey by bow and arrow;

(2) Section 15-43-225, unlawful for guide for persons hunting migratory birds to carry gun;

(3) Section 15-43-317, unlawful to shoot fish with a gun;

(4) Section 5-73-127, unlawful to possess loaded center-fire weapons in certain areas; or

(5) A regulation of the Arkansas State Game and Fish Commission.

(d) The procedures for forfeiture and disposition of the seized property shall be as follows:

(1) The prosecuting attorney of the judicial district within whose jurisdiction the property is seized which is sought to be forfeited shall promptly proceed against the property by filing in the circuit court or the juvenile division of chancery court having jurisdiction of such person a petition for an order to show cause why the circuit court or the juvenile division of chancery court should not order forfeiture of such property.

(2) The petition shall be verified and shall set forth:

(A) A statement that the action is brought pursuant to this section;

(B) The law enforcement agency bringing the action;

(C) A description of the property sought to be forfeited;

(D) A statement that on or about a date certain there was an adjudication of delinquency or a conviction and a finding that the property seized is subject to forfeiture;

(E) A statement detailing the facts in support of subdivision (d)(1) of this section; and

(F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.

(e)(1) Upon receipt of a petition complying with the requirements of subdivision (d)(1) of this section, the judge of the circuit court or the juvenile division of chancery court having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.

(2) In addition, the order shall set a date at least forty-one (41) days from the date of first publication of the order pursuant to subsection (f) of this section for all persons claiming an interest in the property to file such pleadings as they desire as to why the circuit court or the juvenile division of chancery court should not order the forfeiture of such property for use, sale, or other disposition by the law enforcement agency seeking forfeiture of the property.

(3) The circuit court or the juvenile division of chancery court shall further order that all persons who do not appear on that date are deemed to have defaulted and waived any claim to the subject property.

(f)(1) The prosecuting attorney shall give notice of the forfeiture proceedings by:

(A) Causing to be published a copy of the order to show cause twice each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located, with the last publication being not less than five (5) days before the show cause hearing; and

(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of, or a security interest in, the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:

(i) The property is of a type for which title or registration is required by law;

(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property, and if, after diligent search and inquiry, such agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interests in the property shall not be applicable.

(g) At the hearing on the matter, the petitioner shall have the burden to establish that the property is subject to forfeiture by a preponderance of the evidence.

(h) In determining whether or not a motor vehicle should be ordered forfeited, the circuit court or the juvenile division of chancery court may take into consideration the following factors:

(1) Any prior criminal conviction or delinquency adjudication of the felon or juvenile;

(2) Whether or not the firearm was used in connection with any other criminal acts;

(3) Whether the vehicle was used in connection with any other criminal acts;

(4) Whether the juvenile or felon was the lawful owner of the vehicle in question;

(5) If the juvenile or felon is not the lawful owner of the vehicle in question, whether or not the lawful owner knew of the unlawful act being committed which gives rise to the forfeiture penalty; and

(6) Any other factors the circuit court or the juvenile division of chancery court deems relevant.

(i) The final order of forfeiture by the circuit court or the juvenile division of chancery court shall perfect in the law enforcement agency right, title, and interest in and to such property and shall relate back to the date of the seizure.

(j) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable.

(k) Upon filing the petition, the prosecuting attorney for the judicial district may also seek such protective orders as are necessary to prevent the transfer, encumbrance, or other disposal of any property named in the petition.

(l) The law enforcement agency to which the property is forfeited shall:

(1) Destroy all forfeited firearms;

(2)(A) Sell the motor vehicle in accordance with subsection (m) of this section; or

(B) If the motor vehicle is not subject to a lien which has been preserved by the circuit court or the juvenile division of chancery court, retain the motor vehicle for official use.

(m)(1) If a law enforcement agency desires to sell a forfeited motor vehicle, the law enforcement agency shall first cause notice of the sale to be made by publication at least twice a week for two (2) consecutive weeks in a newspaper having general circulation in the county and by sending a copy of the notice of the sale by certified mail, return receipt

requested, to each person having ownership of, or a security interest in, the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:

(A) The property is of a type for which title or registration is required by law;

(B) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(C) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The notice of the sale shall include the time, place, and conditions of the sale and a description of the property to be sold.

(3) The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.

(n) The proceeds of any sale and any moneys forfeited shall be applied:

(1) To payment of the balance due on any lien preserved by the circuit court or the juvenile division of chancery court in the forfeiture proceedings;

(2) To payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property;

(3) To payment of the costs incurred by the prosecuting attorney or attorney for the law enforcement agency, approved by the prosecuting attorney, to which the property is forfeited; and

(4) To payment of costs incurred by the circuit court or the juvenile division of chancery court.

(o) The remaining proceeds or moneys shall be deposited into a special county fund to be titled the "Juvenile Crime Prevention Fund", and the moneys in that fund shall be used solely for making grants to community-based nonprofit organizations which work with juvenile crime prevention and rehabilitation.

History. Acts 1994 (2nd Ex. Sess.), No. 55, § 1; 1994 (2nd Ex. Sess.), No. 56, § 1.

5-74-203. Soliciting or recruiting a minor to join or to remain a member of a criminal gang, organization, or enterprise.

(a) Every person who by intimidation or duress causes, aids, abets, encourages, solicits, or recruits a minor to become or to remain a member of any group which he knows to be

a criminal gang, organization, or enterprise which falls into the definition and intent of this subchapter is guilty of a Class C felony.

(b) Every person who is found guilty of, or who pleads guilty or nolo contendere to, a second or subsequent violation of this section is guilty of a Class B felony.

History. Acts 1994 (2nd Ex. Sess.), No. 33, § 3; 1994 (2nd Ex. Sess.), No. 34, § 3.

SCHOOLS

6-15-423. Comparing grade point averages with national test scores.

(a) The Department of Education shall develop specific criteria, based on generally accepted statistical procedures, for evaluating the association of high school grade point averages and standardized test scores for all students participating in the American College Test and the Arkansas Comprehensive Testing, Assessment, and Accountability Program's end-of-course algebra, geometry, and literacy exams.

(b) Any school identified by the department as having statistically significant variance between grade point average and students' performance on the aforementioned exams shall be notified in writing no later than thirty (30) calendar days after the determination.

(c)(1) The report shall be reviewed as a regular agenda item by the local school district board of directors no later than the second regularly scheduled meeting following receipt of the report by the school.

(2)(A) The superintendent of the school district shall file with the local school board a written explanation with proposed actions to remedy the situation.

(B) Copies of the superintendent's written explanation shall also be filed with the House and Senate Interim Committees on Education and the department.

(3) The department shall, to the extent practicable, send a representative to appear in person at the board meeting to explain the report.

(d) A copy of all reports sent to a school shall be filed with the committees no later than ninety (90) calendar days after the school has been notified.

History. Acts 2001, No. 1660, § 1.

6-15-508. Home schooling prohibited if a sex offender resides in

(a) No child may be home schooled if any person residing in the home with the child is required to register under the Sex and Child Offender Registration Act of 1997, § 12-12-901 et seq.

(b) Upon petition to the sentencing court from the child's parent or guardian, the sentencing court may enter a written order specifically waiving the restriction in subsection (a) of this section.

(c) This section shall not apply if the child to be home schooled is the person registered under the Sex and Child Offender Registration Act of 1997, § 12-12-901 et seq.

History. Acts 2001, No. 1787, § 1.

6-15-902. Grading scale - Exemptions - Special education

(a) The following grading scale shall be used by all public secondary schools in the state for all courses, except advanced placement, offered:

(1) A = 90-100;

(2) B = 80-89;

(3) C = 70-79;

(4) D = 60-69; and

(5) F = 59 and below.

(b) Each letter grade shall be given a numeric value for the purpose of determining grade average. Except for advanced placement courses and honors courses, the numeric value for each letter grade shall be:

(1) A = 4 points;

(2) B = 3 points;

(3) C = 2 points;

(4) D = 1 point; and

(5) F = 0 points.

(c)(1) The State Board of Education shall adopt appropriate equivalents for advanced placement and college courses and shall recommend a uniform grading structure for honors courses.

(2) The numeric grade for college courses taken by high school students, which qualify for college credit, and are approved for credit as a high school course, shall be equal to the numeric grade value for advanced placement courses which are substantially the same as the college course.

(3)(A) The local school board may decide whether to adopt a policy to allow high school students in the district to take college courses for weighted credit equal to the numeric grade awarded in advance placement and honors classes.

(B) If a local school board adopts a policy as set forth in subdivision (c)(3)(A) of this section, the district must apply to the Department of Education through the Assistant Director for Accountability for approval of courses to be designated "concurrent enrollment college courses". The application shall be reviewed for approval to assign a numeric grade value, which may include weighted credit, based on the following:

(i) Letter from the superintendent of the district or principal of the school describing how the course exceeds expectations for coursework required under the Standards for Accreditation, Arkansas Public Schools.

(ii) The grade level or levels of students who will be enrolled in the course.

(d) A notation shall be made on a student's transcript to indicate each special education class included on the transcript.

(e) A school district shall have the option of using the grading scale in this section in the district's elementary schools.

History. Acts 1991, No. 1070, § 1; 1993, No. 1188, § 1; 2001, No. 1121, sec; 1.

6-15-423. Comparing grade point averages with national test scores.

(a) The Department of Education shall develop specific criteria, based on generally accepted statistical procedures, for evaluating the association of high school grade point averages and standardized test scores for all students participating in the American College Test and the Arkansas Comprehensive Testing, Assessment, and Accountability Program's end-of-course algebra, geometry, and literacy exams.

(b) Any school identified by the department as having statistically significant variance between grade point average and students' performance on the aforementioned exams shall be notified in writing no later than thirty (30) calendar days after the determination.

(c)(1) The report shall be reviewed as a regular agenda item by the local school district board of directors no later than the second regularly scheduled meeting following receipt of the report by the school.

(2)(A) The superintendent of the school district shall file with the local school board a written explanation with proposed actions to remedy the situation.

(B) Copies of the superintendent's written explanation shall also be filed with the House and Senate Interim Committees on Education and the department.

(3) The department shall, to the extent practicable, send a representative to appear in person at the board meeting to explain the report.

(d) A copy of all reports sent to a school shall be filed with the committees no later than ninety (90) calendar days after the school has been notified.

History. Acts 2001, No. 1660, § 1.

6-15-508. Home schooling prohibited if a sex offender resides in the home.

(a) No child may be home schooled if any person residing in the home with the child is required to register under the Sex and Child Offender Registration Act of 1997, § 12-12-901 et seq.

(b) Upon petition to the sentencing court from the child's parent or guardian, the sentencing court may enter a written order specifically waiving the restriction in subsection (a) of this section.

(c) This section shall not apply if the child to be home schooled is the person registered under the Sex and Child Offender Registration Act of 1997, § 12-12-901 et seq.

History. Acts 2001, No. 1787, § 1.

6-15-1501. Development, compliance, and implementation.

(a) The State Board of Education shall develop a plan to be known as the "Comprehensive Plan for Consistency and Rigor in Course Work"

(b)(1) The plan shall be designed to ensure that every public school student has the opportunity to learn rigorous and challenging course work by eliminating low level, general education tracks offered by local public school districts in grades nine through twelve (9-12).

(2) The plan may include a provision for standardizing students' transcripts.

(3)(A) The plan shall require that all academic subject area courses offered by local public school districts in grades nine through twelve (9-12) are to be aligned with the Arkansas Curriculum Frameworks in all academic subject matter areas.

(B) These frameworks, developed by the Department of Education, require student demonstration of the rigorous knowledge and skills necessary to succeed in the state's institutions of post-secondary education or to enter the workforce.

(c) The board shall review the plan and revise as necessary based on the five-year cycle for school improvement plans required by the Arkansas Comprehensive Testing, Assessment, and Accountability Program.

(d) The superintendent of each school district shall provide to the department, by October 1, 2002, and each year thereafter on that date, A written statement of assurance that the content of each academic subject area course in grades nine through twelve (9-12) is aligned to frameworks developed by the department and required in the plan under subsection (b) of this section.

(e) The department shall monitor compliance with the requirements of this section during the Standards for Accreditation of Arkansas Public Schools review visit and during the school improvement planning process as defined by the program.

(f) If the department determines that a school district has failed to align the academic subject area content of any academic course in grades nine through twelve (9-12) to the frameworks in any school containing a combination of these grades, the department shall cite the noncompliance of each school on the Standards for Accreditation of Arkansas Public Schools Annual Report for the school and shall file a noncompliance notation on the school's performance report under § 6-15-1402.

(g) The board shall promulgate appropriate rules and regulations necessary to carry out the requirements of this section.

(h) Nothing in the requirements of this section which targets academic subject area courses in grades nine through twelve (9-12) shall be construed to mean that public school districts are not to be held accountable for aligning the curriculum in grades kindergarten through twelve (K-12) to the frameworks for all subject matter areas.

6-16-129. Gun violence prevention.

(a) The board of directors of every public school in the state may declare one (1) week in October of each academic year to be Gun Violence Prevention Week for grades kindergarten through six (K-6).

(b) Any school in the state may develop and present an awareness program or participate in other activities for the purpose of diminishing gun violence.

History. Acts 2001, No. 624, § 1.

6-16-130. Visual art or music.

(a)(1) By no later than June 1, 2002, every public elementary school in the state shall provide instruction in visual art or music based on the state visual art and music frameworks for a period of not less than forty (40) minutes each calendar week of the school year.

(2)(A) Every student in grades one through six (1-6) shall be allowed to participate in the visual art or music class required in this subsection.

(B) Children with disabilities or other special needs shall be included in the visual art and music programs.

(3) Prior to June 1, 2005, the instruction required by this subsection may be provided by a volunteer or by a certified teacher.

(4) The Department of Education shall provide a stipend not less than one hundred dollars ($100) per class to each school for the purchase of necessary supplies or equipment for the classes required by this subsection.

(b)(1) By no later than June 1, 2005, every public elementary school in the state shall provide instruction in visual art and music based on the state visual art and music frameworks for a period of not less than one (1) hour each calendar week of the school year.

(2)(A) Every student in grades one through six (1-6) shall participate in the visual art and music class required in this subsection.

(B) Children with disabilities or other special needs shall be included in the visual art and music programs.

(3) The instruction required by this subsection shall be provided by a licensed teacher certified to teach art or music, as applicable.

(4) The department shall provide a stipend not less than one hundred dollars ($100) per class to each school for the purchase of necessary supplies or equipment for the classes required by this subsection.

History. Acts 2001, No. 1506, § 1.

6-16-131. Future art and music teachers pilot program.

(a) By no later than June 1, 2002, the Department of Education shall develop and implement a Future Art and Music Teachers Pilot Program.

(b) The program shall provide in at least six (6) schools in the state a program through which students in grades eleven (11) and twelve (12) may provide visual art and music instruction to students in grades kindergarten through six (K-6).

History. Acts 2001, No. 1506, § 2.

6-16-132. Physical education.

(a) The General Assembly finds:

(1) That research has shown that active children become active adults;

(2) That children who engage in physical education at school are twice as likely to engage in physical activity outside of school;

(3) That research has shown that physical exercise contributes to maximizing brain function by increasing cerebral blood flow and levels of brain cell growth hormone;

(4) That research has shown that physical exercise decreases the incidence of clinical depression, even for persons diagnosed with cancer; and

(5) That the Physical Education for Progress Act authorized under Title X of the Elementary and Secondary Education Act makes federal dollars available for kindergarten through grade nine (K-9) physical education programs.

(b)(1) Every kindergarten through grade nine (K-9) public educational institution in this state shall require no less than one (1) hour per week of physical education training and instruction which includes no less than twenty (20) minutes of physical activity three (3) times a week for every student who is physically fit and able to participate.

(2) The physical education training and instruction shall be designed to:

(A) Improve the health of this state's school children;

(B) Increase knowledge about the health benefits of physical activity and exercise;

(C) Develop behavioral and motor skills that promote a lifelong commitment to healthy physical activity;

(D) Promote health-focused physical activity among children and adolescents; and

(E) Encourage physical activity outside of physical education.

(3) Suitable modified courses shall be provided for students physically or mentally unable or unfit to take the course or courses prescribed for other pupils.

(4)(A) A student may be exempted from physical education and physical activity requirements by seeking a waiver from the local school board of directors.

(B) The local board may grant such a waiver based on the following criteria:

(i) The student must present a statement by the student's attending physician indicating that participation in physical education and physical activity will jeopardize the student's health and well-being; or

(ii)(a) The parent and student must show that attending physical education classes will violate the student's religious beliefs and would not be merely a matter of personal objection; and

(b) The parent or student must be members of a recognized religious faith that objects to physical education as part of its official doctrine or creed.

(c) The local board shall encourage a student granted a waiver under subdivision (b)(4) to take, as an alternative to physical education, appropriate instruction in health education or other instruction in lifestyle modification if an exemption is granted pursuant to this section.

(d) Each school shall develop a physical education program which fits effectively and efficiently into the school's existing organization while incorporating the goals of this section.

(e) Nothing in this section shall be construed to require any school or school district to hire personnel certified in physical education.

History. Acts 2001, No. 1748, §§ 1, 2.

6-16-203. Readiness testing.

(a) The Department of Education shall develop guidelines for school districts to perform readiness testing for children who are entering kindergarten.

(b)(1) After the department develops guidelines under subsection (a) of this section, each school district in the state shall conduct individual readiness testing on each child entering kindergarten and provide the results of the testing to the child's parents in a timely manner prior to the child's first day of school.

(2) The results of the testing that are provided to parents shall indicate in clear, understandable terminology the child's readiness for entering kindergarten.

History. Acts 2001, No. 1552, § 1.

6-17-106. Insult or abuse of teacher.

(a)(1) It is unlawful, during regular school hours, and in a place where a public school employee is required to be in the course of his or her duties, for any person to address a public school employee using language which, in its common acceptation, is calculated to:

(A) Cause a breach of the peace;

(B) Materially and substantially interfere with the operation of the school; or

(C) Arouse the person to whom it is addressed to anger, to the extent likely to cause imminent retaliation.

(2) A person who violates this section shall be guilty of a misdemeanor and upon conviction be liable for a fine of not less than one hundred dollars ($100) nor more than one thousand five hundred dollars ($1,500).

History. Acts 1979, No. 125, § 1; Acts 1987, No. 741, § 1. A.S.A. 1947, § 80-1905.1. 2001, No. 1565, § 1.

6-17-113. Duty to report and investigate student criminal acts.

(a) For purposes of this section:

(1) "Act of violence" means any violation of Arkansas law where a person purposely or knowingly causes or threatens to cause death or serious physical injury to another person;

(2) "Deadly weapon" means:

(A) A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or

(B) Anything that in the manner of its use or intended use is capable of causing death or serious physical injury; and

(3) "Firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device;

(b) Whenever the principal or other person in charge of a public school has personal knowledge or has received information leading to a reasonable belief that any person has committed or has threatened to commit an act of violence or any crime involving a deadly weapon on school property or while under school supervision, the principal or the person in charge shall immediately report the incident or threat to the superintendent of the school district and the appropriate local law enforcement agency. The report shall be by telephone or in person immediately after the incident or threat and shall be followed by a written report within three (3) business days. The principal shall notify any school employee or other person who initially reported the incident that a report has been made to the appropriate law enforcement agency. The superintendent or his designee shall notify the local school board of any report made to law enforcement under this section.

(c)(1) Whenever a law enforcement officer receives a report of an incident pursuant to subsection (b) of this section, that officer shall immediately report the incident to the office of the prosecuting attorney and shall immediately initiate an investigation of the incident.

(2) The investigation shall be conducted with all reasonable haste and, upon completion, shall be referred to the prosecuting attorney.

(3) The prosecuting attorney shall implement the appropriate course of action and within thirty (30) calendar days after receipt of the file, the prosecuting attorney shall provide a written report to the principal. The report shall state:

(A) Whether the investigation into the reported incident is ongoing;

(B) Whether any charges have been filed in either circuit or juvenile court as a result of the reported incident; and

(C) The disposition of the case.

(4) Upon receipt of the report from the prosecuting attorney, the principal shall notify any school employee or any other person who initially reported the incident that a report has been received from the prosecuting attorney.

(d) Excluding the reporting requirement set out in subdivision (c)(3) in this section, any person who purposely fails to report as required by this section shall be guilty of a Class C misdemeanor.

(e) The State Board of Education shall promulgate rules and regulations to ensure uniform compliance with the requirements of this section and shall consult with the office of the Attorney General concerning the development of these rules and regulations.

History. Acts 1995, No. 888 § 1; 1997, No. 1243, § 1; 1999, No. 1520, § 1.

6-17-116. Protection from sex offenders.

(a) This section shall be known and may be cited as "The Arkansas School Children Protection Act."

(b) For purposes of this section:

(1) A sexual offense is one described in § 5-14-101 et seq.; and

(2) "Conviction" means having pled guilty or nolo contendere to or having been found guilty of committing a sexual offense against a minor.

(c) Any public school district employee who commits a sexual offense against a minor shall upon conviction be dismissed from employment and shall not thereafter be eligible for employment by any school in this state.

History. Acts 2001, No. 1732, § 1.

6-17-208. Grievance procedure.

(a)(1) It is the public policy of the State of Arkansas that each school district shall have a written grievance procedure which provides for an orderly method of resolving concerns raised by an employee at the lowest possible administrative level.

(2)(A) "Grievance" means any concern related to personnel policies or salary raised by an employee; and

(B) "Employee" means a person employed by a school district under a written contract.

(b)(1) The grievance policy shall at least include the following provisions:

(A) A procedure for resolving the matter informally with the employee's immediate supervisor;

(B) A procedure to appeal in writing an unsatisfactorily resolved grievance from the immediate supervisor to the superintendent of schools or his designee;

(C)(i) A procedure to appeal in writing an unsatisfactorily resolved grievance from the superintendent or his designee to the school board at the next regularly scheduled school board meeting unless both parties have agreed to a different date.

(ii) The hearing shall be open or closed at the discretion of the employee.

(iii) If the hearing is open, the parent or guardian of any student under the age of eighteen (18) years who gives testimony may elect to have the student's testimony given in a closed session; and

(D) The right of all parties to be represented by a person of their own choosing, at least at the school board level of the procedure.

(2)(A) The determination by the principal, superintendent, or their designees that the concern expressed by the employee is not a grievance may be appealed to the board for a final decision.

(B) At the hearing, the employee shall have an adequate opportunity to present the grievance, and both parties shall have the opportunity to present and question witnesses.

(c) The grievance policy shall be adopted in accordance with this subchapter and other applicable policies of the district.

History. Acts 1991, No. 558, §§ 1-3; 1993, No. 1149, §§ 1, 2; 1999, No. 1498, § 1; 2001, No. 1169, § 1.

6-17-309. Certification - Waiver.

(a)(1) No class of students shall be under the instruction of a teacher who is not certified to teach the grade level or subject matter of the class for more than thirty (30) consecutive school days in the same class during a school year.

(2) This provision shall not apply to nondegreed vocational-technical teachers and those persons approved by the Department of Education to teach the grade level or subject matter of the class in the department's distance learning program.

(b)(1) If this requirement imposes an undue hardship on a school district, the district may apply to the State Board of Education for a waiver.

(2) The board shall develop rules and regulations for granting a waiver.

(3) Any school district that obtains a waiver shall send written notice of the assignment to the parent or guardian of each student in the classroom no later than the thirtieth school day after the date of the assignment.

History. Acts 2001, No, 1623, § 1.

6-17-1509. Hearing.

(a) A teacher who receives a notice of recommended termination or nonrenewal may file a written request with the board of directors of the district for a hearing.

(b) Written request for a hearing shall be sent by certified or registered mail to the president, vice president, or secretary of the board of directors of the school district, with a copy to the superintendent, or may be delivered in person by the teacher to the president, vice president, or secretary of the board of directors of the school district, with a copy to the superintendent, within thirty (30) calendar days after the written notice of proposed termination or nonrenewal is received by the teacher.

(c) Upon receipt of a request for a hearing, the board shall grant a hearing in accordance with the following provisions:

(1) The hearing shall take place at a time agreed upon in writing by the parties, but if no time can be agreed upon, then the hearing shall be held no fewer than five (5) calendar days nor more than twenty (20) calendar days after the written request has been received by the board;

(2)(A) The hearing shall be private unless the teacher or the board shall request that the hearing be public;

(B) If the hearing is public, the parent or guardian of any student under the age of eighteen (18) years who offers testimoney may elect to have the student's testimoney offered in private.

(3) The teacher and the board may be represented by representatives of their choosing;

(4) It shall not be necessary that a full record of the proceedings at the hearing be made and preserved unless:

(A) The board shall elect to make and preserve a record of the hearing at its own expense, in which event a copy shall be furnished the teacher, upon request, without cost to the teacher; or

(B) A written request is filed with the board by the teacher at least twenty-four (24) hours prior to the time set for the hearing, in which event the board shall make and preserve at its own expense a record of the hearing and shall furnish a transcript to the teacher without cost; and

(5) The board shall not consider at the hearing any new reasons which were not specified in the notices provided pursuant to this subchapter.

(d) Nothing in this section shall preclude a school district which has chosen to officially recognize in its policies an organization representing the majority of the teachers of the

district for the purpose of negotiating personnel policies, salaries, and educational matters of mutual concern under a written policy agreement from conducting a single nonrenewal hearing when all the district's teachers are recommended for nonrenewal provided that each teacher at such hearing shall be given an opportunity to make comments to be included in the hearing record.

History. Acts 1983, No. 936, § 9; A.S.A. 1947, § 80-1266.8; Acts 1999, No. 852, § 4; 1999, No. 1581, § 1; 2001, No. 551, § 1.

6-18-101. Qualifications for valedictorian and salutatorian.

(a)(1) Only a student who has successfully completed a minimum core of high school courses shall be eligible for the honor of serving as a valedictorian or salutatorian of his or her graduating class.

(2) Only a student who has successfully completed the minimum core of high school courses with a minimum grade point established by the school district or its equivalent shall be eligible for distinction as an honor graduate of a senior class in a high school in this state.

(b) For the purpose of meeting the requirements of subsection (a) of this section, the student must complete the minimum core of courses recommended by the Arkansas Higher Education Coordinating Board and the State Board of Education pursuant to § 6-61-217 in effect during the period of his enrollment in high school.

(c) Only a student who is enrolled in a course of study containing the minimum core of high school courses recommended by the coordinating board and the state board pursuant to § 6-61-217 shall be eligible for membership in the National Honor Society or any equivalent academic honor society.

(d) A student who is a member of any academic honor society on August 13, 1993, shall be exempt from the provisions of subsection (c) of this section.

History. Acts 1991, No. 980, §§ 1, 2; 1993, No. 1117, § 1; 1997, No. 977, § 2.

6-18-103. Selective service registration.

(a)(1) Each local school district and each adult education program shall provide a registration form at least thirty (30) days before the student's eighteenth birthday to any student who is enrolled in the district or the adult education program and who is required to register with the selective service system in accordance with the Military Selective Service Act, 50 U.S.C. Appx. § 451 et seq.

(2) The district and adult education program shall further provide appropriate instructions for returning completed registration forms to selective service personnel.

(b) The superintendent of the local school district and the director of the adult education program shall designate a staff person in each high school and at the adult education program site to distribute selective service registration forms to students as provided in subsection (a) of this section.

(c) The Department of Education shall issue rules and regulations to ensure compliance with the provisions of this section.

History. Acts 1997, No. 229, § 1.

6-18-201. Compulsory attendance - Exceptions.

(a) Under the penalty for noncompliance as shall be set by law, every parent, guardian, or other person residing within the State of Arkansas having custody or charge of any child age five (5) through seventeen (17) on or before September 15 of that year shall enroll and send the child to a public, private, or parochial school or provide a home school for the child, as described in § 6-15-501 et seq., with the following exceptions:

(1)(A) Any parent, guardian, or other person residing within the state and having custody or charge of any child may elect for the child not to attend kindergarten if the child will not be age six (6) on September 15 of that particular school year.

(B)(i) If an election is made, the parent, guardian, or other person having custody or charge of the child must file a signed kindergarten waiver form with the local district administrative office.

(ii) The form shall be prescribed by regulation of the Department of Education.

(C) Upon the filing of the kindergarten waiver form, the child shall not be required to attend kindergarten in that school year;

(2) Any child who has received a high school diploma or its equivalent as determined by the State Board of Education is not subject to the attendance requirement;

(3) Any child age sixteen (16) or above enrolled in a postsecondary vocational-technical institution, a community college, or a two-year or four-year institution of higher education is not subject to the attendance requirement;

(4)(A) Any child age sixteen (16) or above enrolled in an adult education program as provided for in subsection (b) of this section or in the Arkansas National Guard Youth Challenge Program is not subject to the attendance requirement.

(B) The requirements in subsection (b) of this section shall not apply to the Arkansas National Guard Youth Challenge Program; and

(5) Any child age sixteen (16) or above enrolled in an adult education program prior to June 13, 1994, under a waiver granted by the local school district who is currently attending the program is not subject to the attendance requirement.

(b) A local school district may grant a waiver of the attendance requirement to any student age sixteen (16) or seventeen (17) to enroll in an adult education program only after all of the following requirements have been met:

(1) The student makes formal application to the school district for a waiver to enroll in an adult education program;

(2)(A) After formal application and prior to any further action on the application, the student shall be administered either a test for adult basic education or a general educational development pretest under standardized testing conditions by a secondary school counselor and shall score 8.5 or above on the test for adult basic education, or a minimum score of 45 on each section and a minimum composite score of 49 on the general educational development test;

(B) Provided, however, that the minimum test scores shall not be required of any student who is subject to the attendance requirement of this section but who was not enrolled in any school district during the previous school year;

(3) The student and the student's parents, guardians, or persons in loco parentis meet with the school counselor to discuss academic options open to the student;

(4) The school district determines that the student is a proper candidate for enrollment in adult education, contingent upon approval by the appropriate adult education program;

(5) The adult education program reviews the student's school and testing records and agrees to admit the student into the program;

(6) The adult education program shall report attendance of all sixteen-year-old and seventeen-year-old enrollees to the sending school district on at least a monthly basis;

(7)(A) The adult education program shall require for continued enrollment a minimum of twenty (20) hours per week of class attendance and instruction;

(B) Provided, however, that a minimum of ten (10) hours shall be required for any student who is employed for thirty (30) hours or more each week;

(8) The student, the student's parents, guardians, or persons in loco parentis, and the administrative head of the adult education program agree in writing that the student will attend the requisite number of hours per week and maintain appropriate conduct as outlined in the local adult education program student handbook;

(9) In the event that a more appropriate assessment test or testing and assessment mechanism shall be developed to determine a reasonable level of competency for success at the adult education level, that test or mechanism shall be substituted, with the approval of the Adult Education Section of the Department of Workforce Education, for the tests required in subdivision (b)(2) of this section;

(10) In the event that a student does not attend class as mandated in this subsection or make reasonable progress toward the completion of the adult education curriculum, the student shall reenroll in the public schools within five (5) days from the date the student is released from the adult education program; and

(11) The above requirements shall not apply to students enrolled in a private, parochial, or home school in the state.

(c) Students age sixteen (16) or seventeen (17), enrolled in a private, parochial or home school who desire to enroll in an adult education program shall meet the following requirements:

(1)(A) Students shall apply for enrollment to the adult education program;

(B) A student enrolled in a private or parochial school shall provide a letter from the principal or administrator of the private or parochial school to verify enrollment;

(C) A student that is home schooled shall provide a notarized copy of the notice of intent to home school provided to the superintendent of the local school district as required by § 6-15-503;

(2) The student and the student's parents, guardians, or persons in loco parentis shall meet with the appropriate staff of the adult education program to discuss academic options open to the student;

(3) The adult education program administrators shall review the student's school and testing records prior to allowing admission to an adult education program;

(4)(A) Except as provided in subdivision (c)(4)(B), the adult education program shall require, for continued enrollment, a minimum of twenty (20) hours per week of class attendance and instruction;

(B) A minimum of ten (10) hours shall be required for any student who is employed for thirty (30) hours or more each week;

(5) The student, the student's parents, guardians, or persons in loco parentis, and the administrative head of the adult education program agree in writing that the student will attend the requisite number of hours per week and maintain appropriate conduct as outlined in the local adult education program student handbook;

(6) In the event a student does not attend class as mandated in this subsection or make reasonable progress toward the completion of the adult education curriculum, the student shall re-enroll in either a public, private, parochial or home school within five (5) days from the date the student is released from the adult education program;

(7) If a home school student is accepted into the adult education program, the student's parent, guardian or person standing in loco parentis shall send written notification to the local public school superintendent of their intent to participate in the adult education program; and

(d) Students age sixteen (16) or above, enrolled in a private, parochial or home school who desire to take the general education development test shall meet the following requirements:

(1) Students shall not be required to obtain permission or approval from any official in a public school district before being allowed to take the test;

(2) A students enrolled in a private or parochial school shall provide a letter from the principal or administrator of the private or parochial school to verify enrollment;

(3) A student enrolled in a home school shall provide a notarized copy of the notice of intent to home school provided to the superintendent of the local school district as required by § 6-15-503.

(e)(1) Nothing in this section shall prohibit a public school district from continuing with an adult education program to provide educational services to sixteen (16) and seventeen (17) year olds enrolled in public school if a contract is negotiated between the district and the adult education program that includes:

(A) Financial considerations for serving the students enrolled in the public school districts; and

(B) Accountability measures to insure monitoring of student progress and attendance.

(2) Any contract for services by an adult education program for sixteen (16) and seventeen (17) year olds shall be submitted to the Department of Workforce Education for final approval.

(3) Any student served by an adult education program under a contractual arrangement as described in subsection (d) of this section shall not be counted in any enrollment numbers reported by the adult education programs for state or federal funding.

(f) Any child who will be six (6) years of age on or before October 1 of the school year of enrollment and who has not completed a state-accredited kindergarten program shall be evaluated by the district and may be placed in the first grade if the results of the evaluation justify placement in the first grade and the child's parent agrees with placement in the first grade. Otherwise the child shall be placed in kindergarten.

History. Acts 1983 (Ex. Sess.), No. 60, § 3; 1985, No. 1029, § 2; 1985 (1st Ex. Sess.), No. 40, § 1; 1985 (1st Ex. Sess.), No. 42, § 1; A.S.A 1947, §§ 80-1503, 80-1503.4; Acts 1987, No. 319, § 1; 1989, No. 598, § 1; 1991, No. 320, § 1; 1994 (2nd Ex. Sess.), No. 30, § 1; 1994 (2nd Ex. Sess.), No. 31, § 1; 1995, No. 837, §§ 1, 2; 1997, No. 1148, § 1; No. 1230, § 1; 1999, No. 570, § 1; 2001, No. 1514, § 1; No. 1535, § 1; No. 1659, § 1.

6-18-202. Age and residence for attending public schools.

(a) For purposes of this section:

(1) "Reside" means to be physically present and to maintain a permanent place of abode for an average of no fewer than four (4) calendar days and nights per week for a primary purpose other than school attendance;

(2) "Resident" means a student whose parents, legal guardians, persons having legal, lawful control of the student under order of a court, or persons standing in loco parentis reside in the school district; and

(3) "Residential address" means the physical location where the student's parents, legal guardians, persons having legal lawful control of the student under order of a court, or persons standing in loco parentis reside.

(b)(1) The public schools of any school district in this state shall be open and free through completion of the secondary program to all persons in this state between the ages of five (5) and twenty-one (21) years whose parents, legal guardians, or other persons having lawful control of the person under an order of a court reside within the school district and to all persons between those ages who have been legally transferred to the district for education purposes.

(2) For purposes of this section, a student may use the residential address of a legal guardian, person having legal lawful control of the student under order of a court, or person standing in loco parentis only if the student resides at the same residential address and if the guardianship or other legal authority is not granted solely for educational needs or school attendance purposes.

(3) Any school district may require a parent, legal guardian, or other, person in loco parentis who enrolls a student in a school district to sign a statement under oath attesting to his or her residential address or to provide other proof that a student is a resident of the school district as defined by this section.

(c) Any person eighteen (18) years of age or older may establish a residence separate and apart from his or her parents or guardians for school attendance purposes.

(d) In order for a person under the age of eighteen (18) years to establish a residence for the purpose of attending the public schools separate and apart from his or her parents, guardians, or other persons having lawful control of him or her under an order of a court, the person must actually reside in the district for a primary purpose other than that of school attendance.

(e)(1) Any school district which admits for ten (10) school days or more a student the school district knows or should have known is a resident of another school district not included in a tuition agreement or not officially transferred to it shall be liable to the resident district of the student for an amount of money equal to the state equalization funding per student the complainant district would have received or seven hundred fifty dollars ($750) per year, whichever is greater.

(2) Notice to a school district by a complainant school district that a student is attending illegally in the school district begins the running of the ten-day time period.

(3) Causes of action arising under this subsection (e) may be brought in a court of competent jurisdiction.

(4) The school district which admits the student shall have the burden of proof as to the student's residency.

(5) Upon presentation of a court order or judgment finding that a school district has admitted for ten (10) school days or more a student the district should have known was a resident of another district, as set forth in subdivision (e)(1) of this section, the Department of Education will satisfy the defendant school district's liability by transferring to the complainant school district the appropriate amount of funds from state aid which the department would have distributed to the defendant school district. Such transfer will be made from the next payment due to the district from the department after the order is received by the department.

(f) Any person who knowingly gives a false residential address for purposes of public school enrollment is guilty of a misdemeanor and subject to a fine not to exceed five hundred dollars ($500).

(g) This section shall not be construed to restrict a student's ability to participate in a tuition agreement with a nonresdient school district or to officially transfer to another school district pursuant to the Arkansas Public School Choice Act of 1989, § 6-18-206.

History. Acts 1987, No. 466. § 1; 1987, No. 591, § 1; 1989, No. 895, § 1; 1999, No. 391, § 9; 1999, No. 663, § 1.

6-18-203. Attendance in district other than district of residence.

(a) When any person owns a tract of land on which the person resides and which tract of land is located partially in one (1) school district and partially in another, the school-age children of that person shall attend school in the school district in which the residence is located.

(b)(1) The children or wards of any person who is at least a half-time employee of a public school in one (1) school district in this state or is employed full time by an educational cooperative and is a resident of another school district in this state shall be entitled to be enrolled in and to attend school in either the district in which the parent or guardian resides, the district in which the parent or guardian is at least a half-time employee of a public school, or any district located in the county in which the main office of the educational cooperative is located.

(2)(A) The General Assembly recognizes and embraces the responsibility of the state to promote desegregation of its schools and finds that this enactment affects such a limited class of students that desegregation will not be impeded. If, however, unforeseen circumstances result in a finding by a court that a school district is unlawfully segregated in whole or in part as a result of these provisions, the provisions in this subsection shall not apply to the children or wards of teachers in that district.

(B) Therefore, the provisions in this subsection shall not apply to the children or wards of those teachers who reside in school districts which may hereafter be found by a court to be unlawfully segregated if the finding is based upon segregation which was caused in whole or in part by the effects of these provisions.

(c) When any employee of the Department of Correction who lives on department property is transferred from one unit of the department to another unit, the children or

wards of such employee shall be entitled to complete the school term in the district in which they are enrolled at the time the parent or guardian was transferred.

(d) Any child and that child's sibling or siblings currently attending a non-resident school under the subsection (a) of this section shall be allowed to complete all remaining school years at the non-resident district or may attend the resident district if he or she so chooses.

History. Acts 1983, No. 822, § 1; A.S.A. 1947, § 80-1568; Acts 1987, No. 624, § 1; 1991, No. 915; § 1; 1993, No. 1105, § 1; 1995, No. 726, § 1; 1997, No. 1304, § 1; 1999, No. 947, § 1; 2001, No. 1207, § 1.

6-18-206. Public school choice.

(a)(1) This section may be referred to and cited as the "Arkansas Public School Choice Act of 1989".

(2) The General Assembly hereby finds that the students in Arkansas' public schools and their parents will become more informed about and involved in the public educational system if students and their parents or guardians are provided greater freedom to determine the most effective school for meeting their individual educational needs. There is no right school for every student, and permitting students to choose from among different schools with differing assets will increase the likelihood that some marginal students will stay in school and that other, more motivated students will find their full academic potential.

(3) The General Assembly further finds that giving more options to parents and students with respect to where they attend public school will increase the responsiveness and effectiveness of the state's schools, since teachers, administrators, and school board members will have added incentive to satisfy the educational needs of the students who reside in the district.

(4) The General Assembly therefore finds that these benefits of enhanced quality and effectiveness in our public schools justify permitting a student to apply for admission to a school in any district beyond the one in which he resides, provided that the transfer by this student would not adversely affect the desegregation of either district.

(5) A public school choice program is hereby established to enable any student to attend a school in a district in which the student does not reside, subject to the restrictions contained in this section.

(b)(1)(A) Before a student may attend a school in a nonresident district, the student's parent or guardian must submit an application on a form approved by the Department of Education to the nonresident district. This application must be postmarked not later than

July 1 of the year in which the student would begin the fall semester at the nonresident district.

(B)(i) Within thirty (30) days of the receipt of an application from a nonresident student seeking admission under the terms of this section, a participating district shall notify the parent or guardian and the resident district in writing as to whether the student's application has been accepted or rejected.

(ii) If the application is rejected, the nonresident district must state in the notification letter the reason for rejection.

(iii) If the application is accepted, the nonresident district shall state in the notification letter:

(a) An absolute deadline for the student to enroll in the district, or the acceptance notification is null; and

(b) Any instructions for the renewal procedures established by the district.

(2)(A) The school board of any participating district must adopt, by resolution, specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building. Nothing in this section requires a school district to add teachers or classrooms or to in any way exceed the requirements and standards established by existing law. Standards shall include a statement that priority will be given to applicants from siblings or step-siblings residing in the same residence or household of students already attending the district by choice. Standards may not include an applicant's previous academic achievement, athletic, or other extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings, except an expulsion from another district may be included pursuant to § 6-18-510.

(B)(i) Any student that applies for a transfer under this section and is denied a transfer by the nonresident district, may request a hearing before the State Board of Education to reconsider the transfer.

(ii) A request for a hearing before the State Board of Education shall be in writing and shall be postmarked no later that ten (10) days after notice of rejection of application under subdivision (b)(1)(B) is received by the student.

(3) A school board may, by resolution, determine that it will not admit any nonresident pupil to its schools pursuant to this section.

(c) The responsibility for transportation of a student from the student's resident school district to a nonresident school district shall be borne by the student or the student's parents. The resident school district and the non-resident school district may enter in to a

written agreement with the student or student's parents to provide transportation to or from the non-resident district, or both.

(d)(1) A nonresident district shall accept credits toward graduation that were awarded by another district.

(2) The nonresident district shall award a diploma to a nonresident student if the student meets the nonresident district's graduation requirements.

(e) For purposes of determining a school district's state equalization aid, the nonresident student shall be counted as a part of the average daily membership of the district to which the student has transferred.

(f) The provisions of this section and all student choice options created hereby are subject to the following limitations:

(1) No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in his resident district except in the circumstances set forth in subdivisions (2) and (4) of this subsection;

(2) A transfer to a district is exempt from the restriction set forth in subdivision (f)(1) of this section if all districts within a county have voted to partcipate in choice and the transfer is between two (2) districts within a county, and if the minority percentage in the student's race and majority percentages of school enrollment in both the resident and non-resident district remain within an acceptable range of the county's overall minority percentage in the student's race and majority percentages of school population as set forth by the Department of Education;

(3) The department shall, by the filing deadline each year, compute the minority percentage in the student's race and majority percentages of each county's public school population from the October Annual School Report and shall then compute the acceptable range of variance from those percentages for school districts within each county. In establishing the acceptable range of variance, the department is directed to use the remedial guideline established in Little Rock School District v. Pulaski County Special School District of allowing an overrepresentation or underrepresentation of black or white students of one-fourth (1/4) or twenty-five percent (25%) of the county's racial balance. In establishing the acceptable range of variance for school choice, the department is directed to use the remedial guideline of allowing an overrepresentation or underrepresentation of minority or majority students of one-fourth (1/4) or twenty-five percent (25%) of the county's racial balance;

(4) A transfer is exempt from the restriction set forth in subdivision (f)(1) of this section if each school district within the county does not have a critical mass of minority percentage in the student's race students of more than ten percent (10%) of any single race;

(5) In any instance where the foregoing provisions would result in a conflict with a desegregation court order or a district's court-approved desegregation plan, the terms of the order or plan shall govern;

(6) The department shall adopt appropriate rules and regulations to implement the provisions of this section; and

(7) The department shall monitor school districts for compliance with this section.

(g) The State Board of Education shall be authorized to resolve disputes arising under subsections (b), (c), (d), (e), and (f) of this section.

(h) A district participating under this program shall cause public announcements to be made over the broadcast media and in the print media at such times and in such manner as to inform parents or guardians of students in adjoining districts of the availability of the program, the application deadline, and the requirements and procedure for nonresident students to participate in the program.

(i)(1) All school districts shall report to the Equity Assistance Center of the Department of Education on an annual basis the race, gender, and other pertinent information needed to properly monitor compliance with the provisions of this section.

(2) The reports may be on those forms that are prescribed by the department, or the data may be submitted electronically by the district using a format authorized by the department.

(3) The department may withhold state aid from any school district that fails to file its report each year or fails to file any other information with a published deadline requested from school districts by the Equity Assistance Center, so long as thirty (30) calendar days are given between the request for the information and the published deadline, except when the request comes from a member or committee of the General Assembly.

(4) A copy of the report shall be provided to the Joint Interim Oversight Subcommittee on Educational Reform.

History. Acts 1989, No. 609, §§ 1-13; 1991, No. 214, § 1; 1991, No. 284, §§ 1-3; 1993, No. 655, § 1; 1995, No. 109, § 1; 1997, No. 112, § 10; 1999, No. 391, § 10; 1999, No. 1241, § 1; 2001, No. 1788, § 1.

6-18-207. Minimum age for enrollment in public school.

(a)(1) Students may enter kindergarten in the public schools of this state if they will attain the age of five (5) years on or before September 15 of the year in which they are seeking initial enrollment.

(2) Any student who has been enrolled in a state-accredited or state-approved kindergarten program in another state for at least sixty (60) days, who will become five (5) years old during the year in which he is enrolled in kindergarten, and who meets the basic residency requirement for school attendance may be enrolled in kindergarten upon written request to the school district.

(b)(1) Any child may enter the first grade in the public schools of this state if the child will attain the age of six (6) years during the school year in which the child is seeking enrollment and the child has successfully completed a kindergarten program in a public school in this state.

(2) Any child who will be six (6) years of age on or before October 1 of the school year of enrollment and who has not completed a state-accredited kindergarten program shall be enrolled pursuant to § 6-18-201(f).

(3) Any child who has been enrolled in the first grade in a state-accredited or state-approved elementary school in another state for a period of at least sixty (60) days, who will become age six (6) years during the school year in which he is enrolled in grade one (1), and who meets the basic residency requirement for school attendance may be enrolled in the first grade.

History. Acts 1983 (Ex. Sess.), No. 60, § 2; 1985, No. 1029, § 1; A.S.A. 1947, § 80-1501.2; Acts 1989, No. 598, § 2; 1997, No. 1230, § 2; 1999, No. 570, § 2; 2001, No. 1535, § 2.

6-18-208. Requirements for enrollment in public school - Exceptions.

(a) Prior to a child's admission to an Arkansas public school, a school district shall request the parent, guardian, or other responsible person to furnish the child's social security number and shall inform the parent, guardian, or other responsible person that, in the alternative, they may request that the school district assign the child a nine-digit number designated by the Department of Education.

(b) Prior to a child's admission to an Arkansas public school, the parent, guardian, or responsible person shall provide the school district with one (1) of the following documents indicating the child's age:

(1) A birth certificate;

(2) A statement by the local registrar or a county recorder certifying the child's date of birth;

(3) An attested baptismal certificate;

(4) A passport;

(5) An affidavit of the date and place of birth by the child's parent or guardian; or

(6) Previous school records.

(c) Prior to a child's admission to an Arkansas public school, the parent, guardian, or other responsible person shall indicate on school registration forms whether the child has been expelled from school in any other school district or is a party to an expulsion proceeding.

History. Acts 1959, No. 139, § 1; A.S.A. 1947, § 80-1501.1; Acts 1991, No. 838, § 1; 1993, No. 363, § 1; 1995, No. 574, § 1.

6-18-209. Adoption of student attendance policies - Effect of excessive absences.

(a) The board of directors of each school district in this state shall adopt student attendance policies.

(b) Each school district shall, as a part of its six-year educational plan, develop strategies for promoting maximum student attendance including, but not limited to, the use of alternative classrooms and in-school suspensions in lieu of suspension from school.

(c) A student attendance policy may include excessive unexcused absences as a mandatory basis for denial of promotion or graduation.

History. Acts 1983 (Ex. Sess.), No. 60, § 4; 1985, No. 1069, § 1; A.S.A. 1947, § 80-1504.

6-18-221. Cooperation of law enforcement agencies.

(a) Any public school district may enter into a cooperative agreement with local law enforcement officials to implement within the district an "Operation Stay in School" program.

(b) Upon the request of the board of directors of the school district, the law enforcement agency shall stipulate, with the administration of the school district, specific days and hours when law enforcement officers will attempt to locate school-age students in the community who are off school premises during school hours without valid documentation excusing their absence.

(c) Any certified law enforcement officer may stop and detain any unsupervised school-age student located off school premises during school hours and request the production of documentation excusing his absence from school.

(d) Upon the student's failure to produce sufficient documentation, the law enforcement officer may take the student into custody and return the student to his school, transport

him to his parents, or transport him to the truancy reception center, which shall not be a jail, juvenile detention center, or police department, and which has been designated by the school district.

(e)(1) Any school district adopting this program shall include in its attendance policy a notice to parents and students that it has entered into a cooperative agreement with law enforcement officials to implement an Operation Stay in School Program, and unsupervised students found off school premises during school hours shall be subject to questioning by a law enforcement officer under the program.

(2) Any school district adopting this program shall include provisions for furnishing valid documentation for students in work-study programs or other authorized absences from school premises to assist law enforcement officers in determining the validity of documentation excusing the student's absence from school during school hours.

History. Acts 1989, No. 867, § 1; 1995, No. 1296, § 22.

6-18-222. Penalty for excessive unexcused absences - Revocation of driving privilege.

(a)(1)(A)(i) The board of directors of each school district in this state shall adopt a student attendance policy, as provided for in § 6-18-209, which shall include a certain number of excessive absences which may be used as a basis for denial of course credit, promotion, or graduation.

(ii) However, excessive absences shall not be a basis for expulsion or dismissal of a student.

(B) The legislative intent is that a student having excessive absences because of illness, accident, or other unavoidable reasons should be given assistance in obtaining credit for the courses.

(2) The State Board of Workforce Education and Career Opportunities shall adopt a student attendance policy for sixteen-year-olds and seventeen-year-olds enrolled in an adult education program. The policy shall require a minimum attendance of ten (10) hours per week to remain in the program.

(3) A copy of the school district's student attendance policy or the state board's student attendance policy for sixteen-year-olds and seventeen-year-olds enrolled in adult education shall be provided to the students' parents, guardians, or persons in loco parentis at the beginning of the school year or upon enrollment, whichever event first occurs.

(4) The student's parents, guardians, or persons in loco parentis and the community truancy board shall be notified when the student has accumulated excessive unexcused absences equal to one-half (1/2) the total number of absences permitted per semester under the school district's or the state board's student attendance policy. Notice shall be by telephonic contact with the student's parents, guardians, or persons in loco parentis by the end of the school day in which such absence occurred or by regular mail with a return address on the envelope sent no later than the following school day. Notice to the community truancy board shall be by letter to the chairman of the community truancy board.

(A) The community truancy board shall schedule a conference with the parents, guardians, or persons in loco parentis to establish a plan to take steps to eliminate or reduce the student's unexcused absences.

(B) If the student's parents, guardians, or persons in loco parentis do not attend the scheduled conference, the conference may be conducted with the student and a school official. However, the parent, guardian or person in loco parentis shall be notified of the steps to be taken to eliminate or reduce the child's absence.

(5)(A) Whenever a student exceeds the number of excessive unexcused absences provided for in the district's or the state board's student attendance policy, the school district or the adult education program shall notify the prosecuting authority and the community truancy board, and the student's parents, guardians, or persons in loco parentis shall be subject to a civil penalty in an amount as a juvenile court or other court of competent jurisdiction, as authorized under subdivision (a)(6)(A) of this section, may prescribe, but not to exceed five hundred dollars ($500) plus costs of court and any reasonable fees assessed by the court.

(B) The penalty shall be forwarded by the court to the school or the adult education program attended by the student.

(6)(A)(i)(a) Upon notification by the school district or the adult education program to the prosecuting authority, the prosecuting authority shall file in juvenile court a truancy petition pursuant to § 9-27-310 or enter into a diversion agreement with the student pursuant to § 9-27-323.

(b) However, the prosecuting authority may file an action in another court of competent jurisdiction if the prosecuting authorities and the juvenile judge, upon agreement, have developed a written plan for prosecuting truant students outside of juvenile court by October 1, 1997.

(ii) For any action filed pursuant to a written plan or filed in juvenile court to impose the civil penalty set forth in subdivision (a)(5) of this section, the prosecuting authority shall be exempt from all filing fees and shall take whatever action is necessary to collect the penalty provided for therein.

(B) Actions under this subsection (a) shall be filed in juvenile court as a matter of preference.

(C) Municipal attorneys may practice in juvenile court for the limited purpose of filing petitions or entering into diversion agreements as authorized by this subdivision (a)(6)(C) if agreed upon by all of the parties pursuant to subdivision (a)(6)(A) of this section.

(7)(A) The purpose of the penalty set forth in this subsection (a) is to impress upon the parents, guardians, or persons in loco parentis the importance of school or adult education attendance, and the penalty is not to be used primarily as a source of revenue.

(B)(i) When assessing penalties, the court shall be aware of any available programs designed to improve the parent-child relationship or parenting skills.

(ii) When practicable and appropriate, the court may utilize mandatory attendance at the programs as well as community service requirements in lieu of monetary penalties.

(8) As used in this section, "prosecuting authority" means:

(A) The elected district prosecuting attorney, or his appointed deputy, for schools located in unincorporated areas of the county or within cities not having a police or municipal court; and means

(B) The prosecuting attorney of the city for schools located within the city limits of cities having either a police court or a municipal court in which a city prosecutor represents the city for violations of city ordinances or traffic violations.

(9) In any instance where it is found that the school district, the adult education program, or the prosecuting authority is not complying with the provisions of this section, the State Board of Education may petition the circuit court to issue a writ of mandamus.

(b)(1)(A) Each public, private, or parochial school shall notify the Department of Finance and Administration whenever a student fourteen (14) years of age or older is no longer in school.

(B) Each adult education program shall notify the department whenever a student sixteen (16) or seventeen (17) years of age has left the program without receiving a high school equivalency certificate.

(2)(A) Upon receipt of notification, the department shall notify

the licensee by certified mail, return receipt requested, that his motor vehicle operator's license will be suspended unless a hearing is requested in writing within thirty (30) days from the date of notice.

(B) The licensee shall be entitled to retain or regain his license by providing the department with adequate evidence that:

(i) The licensee is eighteen (18) years of age;

(ii) The licensee is attending school or an adult education program; or

(iii) The licensee has obtained a high school diploma or its equivalent.

(C)(i) In cases where demonstrable financial hardship would result from the suspension of the learner's permit or driver's license, the department may grant exceptions only to the extent necessary to ameliorate the hardship.

(ii) If it can be demonstrated that the conditions for granting a hardship were fraudulent, the parent, guardian, or person in loco parentis shall be subject to all applicable perjury statutes.

(3) The department shall have the power to promulgate rules and regulations to carry out the intent of this section and shall distribute to each public, private, and parochial school and each adult education program a copy of all rules and regulations adopted under this section.

History. Acts 1989, No. 473, §§ 1, 2; 1989 (3rd Ex. Sess.), No. 70, §§ 1-5; 1991, No. 876, § 1; 1992 (1st Ex. Sess.), No. 42 § 1; 1994, (2nd Ex. Sess.), No. 30, § 2; 1994, (2nd Ex. Sess.), No. 31, § 2; 1995, No. 572, § 1; 1995, No. 837, § 3; 1995, No. 1296, § 23; 1997, No. 1308, § 1; 1999, No. 1323, § 20; 1999, No. 1579, § 3.

6-18-223. Credit for college courses.

(a)(1) A public school student who is enrolled in a public school in Arkansas and who has successfully completed the eighth grade, shall be eligible to enroll in a publicly supported community college or four-year college or university in accordance with rules and regulations adopted by each institution in consultation with the Arkansas Higher Education Coordinating Board.

(2) A student who enrolls in and successfully completes a course or courses offered by an institution of higher education shall be entitled to receive appropriate academic credit in both the institution of higher education and the public school in which such student is enrolled, which credit shall be applicable to graduation requirements.

(b) The State Board of Education is authorized to adopt rules and regulations as may be necessary for implementation of this requirement.

History. Acts 1989 (3rd Ex. Sess.), No. 60, § 1; 1991, No. 1097, § 1.

6-18-224. Early graduation.

Any student who is enrolled in a public high school in Arkansas and has earned the number of credits required by the local school district for graduation shall be eligible to graduate from the high school without regard to the grade level the student is enrolled in at the time such credits are earned.

History. Acts 1997, No. 275, § 1.

6-18-316. Transfer on petition of student.

(a) Upon the petition of a student residing in one (1) school district, the resident district, to transfer to another school district, the receiving district, the board of directors of the resident district may enter into an agreement with the board of directors of the receiving school district transferring the student to the receiving district for purposes of education.

(b) Forms for use in transferring children from one (1) school district to another shall be provided by the Department of Education.

(c) After the petition has been approved by the board of directors of the resident district and the board of directors of the receiving district, copies of approved transfers shall be filed by the receiving district with the office of the county clerk, with the administrative offices of the respective school districts, and with the department.

(d) This legal transfer of a student from one (1) district to another places the responsibility for the education of the student on the receiving district and permits the receiving district to count these children in average daily membership for state aid purposes.

(e) This section does not transfer the local tax money from the resident district.

(f) Upon approval of the transfer by the resident district, the receiving district may also enter into a tuition agreement with either the resident district or the parents of the child or children involved, whereby the resident district or the parents will make tuition payments to the receiving district to compensate the district for local taxes not received on behalf of

the child or children involved. The annual amount of the tuition shall not exceed the average amount of local property tax per pupil collected in the receiving district in the preceding year.

(g) Student transfers granted under the provisions of this section shall be reviewed at the end of four (4) years by the districts involved to determine if the agreement should be renewed.

History. Acts 1987, No. 464, § 1; 1987, No. 762, § 1; 1989, No. 950, § 2; 2001, No. 1207, § 2.

6-18-502. Guidelines for development of school district student discipline

(a) The Department of Education shall establish guidelines for the development of school district student discipline policies.

(b) Such guidelines shall include, but not be limited to, the following requirements:

(1) Parents, students, and school district personnel, including teachers, shall be involved in the development of school district student discipline policies;

(2)(A) The student discipline policies shall be reviewed annually by the school district's committee on personnel policies.

(B) The committee may recommend changes in the policies to the board of directors of the local school district; and

(3) Student discipline policies shall include, but not be limited to, the following offenses:

(A) Willfully and intentionally assaulting or threatening to assault or abuse any student or teacher, principal, superintendent, or other employee of a school system;

(B) Possession by students of any firearm or other weapon prohibited upon the school campus by law or by policies adopted by the school board;

(C) Using, offering for sale, or selling beer, alcoholic beverages, or other illicit drugs by students on school property;

(D) Possession by a student of any paging device, beeper, or similar electronic communication device on the school campus, however;

(i) The policy may provide an exemption for possession of such a device by a student who is required to use such a device for health or other compelling reasons; and

(ii) The policy may exempt possession of such a device after normal school hours for extracirricular activities; and

(E) Willfully or intentionally damaging, destroying, or stealing school property by students.

(c) The school discipline policies shall:

(1) Prescribe minimum and maximum penalties, including students' suspension or dismissal from school, for violations of each of the aforementioned offenses and for violations of other practices prohibited by school discipline policies;

(2)(A) Prescribe expulsion from school for a period of not less than one (1) year for possession of any firearm or other weapon prohibited upon the school campus by law.

(B) Provided, however, that the superintendent shall have discretion to modify such expulsion requirement for a student on a case-by-case basis;

(3) Establish procedures for notice to students and parents of charges, hearings, and other due process proceedings to be applicable in the enforcement and administration of such policies by the school administrator and by the school board;

(4) Include prevention, intervention, and conflict resolution provisions; and

(5) Set forth the role and authority of public school employees and volunteers as provided in this subchapter.

(d) Student discipline policies shall provide that parents and students will be advised of the rules and regulations by which the school is governed and will be made aware of the behavior that will call for disciplinary action and the types of corrective actions that may be imposed.

(e) Each school district shall develop a procedure for written notification to all parents and students of the district's student discipline policies and for documentation of the receipt of the policies by all parents and students.

(f) Teachers and administrators, classified school employees, and volunteers shall be provided with appropriate student discipline training.

(g) If a school employee believes that any action taken by the school district to discipline a student referred by that employee does not follow school district discipline policies, the school employee may appeal under the district's grievance procedure as provided under § 6-17-208.

(h) In developing the state guidelines for school district discipline policies, the department shall involve parents, students, teachers, and administrators.

History. Acts 1983 (Ex. Sess.), No. 77, § 1; 1983 (Ex. Sess.), No. 104, § 1; A.S.A. 1947, § 80-1629.6; Acts 1989, No. 146, § 1; 1995, No. 567, § 1; 1995, No. 968, § 1; 1997, No. 706, § 1; 1999, No. 1475, §§ 2, 3; 2001, No. 447, § 1.

6-18-505. School Discipline Act.

(a) This section may be cited as the "School Discipline Act".

(b) Every teacher is authorized to hold every pupil strictly accountable for any disorderly conduct in school or on the playground of the school, or on any school bus going to or returning from school, or during intermission or recess.

(c)(1) Any teacher or school administrator in a school district that authorizes use of corporal punishment in the district's written student discipline policy may use corporal punishment, provided only that the punishment is administered in accord with the district's written student discipline policy, against any pupil in order to maintain discipline and order within the public schools.

(2) As used in subdivision (c)(1) of this section, "teachers and administrators" means those persons employed by a school district and required to have a state-issued certificate as a condition of their employment.

History. Acts 1977, No. 904, §§ 1, 2; A.S.A. 1947, §§ 80-1629.1; 80-1629.2; Acts 1994 (2nd Ex. Sess.), No. 51, §§ 1, 5.

6-18-506. School Dismissal Act.

(a) This section may be cited as the "School Dismissal Act".

(b) Every school district board of directors shall adopt and file with the Department of Education written policies concerning the violation of school standards such as disrespect for teachers and classified school employees, vandalism, and other undesirable behavioral patterns.

(c) Every school district board of directors in this state shall hold its pupils strictly accountable for any disorderly conduct in school, on the school grounds, in a school bus, or at any school function.

(d) Each school district board of directors shall adopt written rules and regulations delineating its disciplinary policies.

(e) The policy may be revised at any time by filing an updated policy with the department.

History. Acts 1979, No. 74, §§ 1-3; A.S.A. 1947, §§ 80-1629.3; - 80-1629.5; Acts 1999, No. 1475, § 4.

6-18-507. Suspension - Expulsion.

(a) As used in this section:

(1) "Course time" means the number of hours of instruction devoted to a single subject during the school week;

(2) "Expulsion" means dismissal from school for a period of time that exceeds ten (10) days;

(3) "Nontraditional scheduling" means block or other alternative scheduling as defined by the Department of Education; and

(4) "Suspension" means dismissal from school for a period of time that does not exceed ten (10) days.

(b) The board of directors of a school district may suspend or expel any student from school for violation of the school district's written discipline policies.

(c)(1) The board of directors may authorize a teacher or administrator to suspend any student for a maximum of ten (10) school days for violation of the school district's written discipline policies, subject to appeal to the superintendent or his designee; however, schools that utilize nontraditional scheduling may not suspend students from more course time than would result from a ten-day suspension under the last traditional schedule used by the school district.

(2) If the superintendent initiates the suspension process, the decision may be appealed to the board.

(d)(1) A superintendent may recommend the expulsion of a student for more than ten (10) days for violation of the school district's written discipline policies, subject to appeal to the board of directors and to requirements of the federal Individuals with Disabilities Education Act.

(2) All school district board meetings entertaining an appeal shall be conducted in executive session if requested by the parent or guardian of the student provided that after hearing all testimony and debate, the board of directors shall conclude the executive session and reconvene in public session to vote on the appeal.

(e)(1) The superintendent of any school district shall recommend the expulsion of any student from school for a period of not less than one (1) year for possession of any firearm or other weapon prohibited upon the school campus by law; provided, however,

that the superintendent shall have discretion to modify the expulsion requirement for a student on a case-by-case basis.

(2) All school districts shall adopt a written policy regarding expulsion of a student for possessing a firearm or other prohibited weapon on school property which shall require parents, guardians, or other persons in loco parentis of a student expelled under this subsection (e) to sign a statement acknowledging that the parents have read and understand current laws regarding the possibility of parental responsibility for allowing a child to possess a weapon on school property. The statement shall be signed by the parents, guardians, or other persons in loco parentis prior to readmitting a student or enrolling a student in any public school immediately after the expiration of an expulsion period pursuant to this subsection (e).

(3)(A) The school administrators and the local school board shall complete the expulsion process of any student that was initiated because the student possessed a firearm or other prohibited weapon on school property regardless of the enrollment status of the student.

(B) The principal of each school shall report within a week to the department the name, current address, and social security number of any student who is expelled for possessing a firearm or other prohibited weapon on school property or for committing other acts of violence.

(C) The expulsion shall be noted on the student's permanent school record.

(D) Nothing in this subdivision (e)(3) shall be construed to limit a superintendent's discretion to modify the expulsion requirement for a student on a case-by-case basis as set out in this subsection (e).

(4)(A) The department shall establish and maintain a registry of students who are expelled for possessing a firearm or other prohibited weapon on school property or for committing other acts of violence.

(B) The names, addresses, and social security numbers of all students listed in the registry shall be available by phone, facsimile, or mail to any school principal in the state.

History. Acts 1931, No. 169, § 170; Pope's Dig., § 11612; Acts 1979, No. 441, § 1; A.S.A. 1947, § 80-1516; Acts 1995, No. 567, § 3; 1997, No. 742, § 1; 1999, No. 1150, § 1.

6-18-511. Removal by teacher.

(a) Consistent with state and federal law, a teacher may remove a student from class and send him or her to the principal's or principal's designee's office in order to maintain effective discipline in the classroom.

(b) A teacher may remove from class a student:

(1) Who has been documented by the teacher as repeatedly interfering with the teacher's ability to teach the students in the class or with the ability of the student's classmates to learn; or

(2) Whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to teach the students in the class or with the ability of the student's classmates to learn.

(c) If a teacher removes a student from class in accordance with subsection (b) of this section, the principal or his designee may:

(1) Place the student into another appropriate classroom, into in-school suspension, or into the district's alternative learning environment established in accordance with § 6-18-508, so long as the placement is consistent with the school district's written student discipline policy;

(2) Return the student to the class; or

(3) Take other appropriate action consistent with the school district's discipline policy, state law, and federal law.

(d)(1) If a teacher removes a student from class twice during any nine-week grading period or its equivalent as determined by the Department of Education, the principal or his designee may not return the student to the teacher's class unless a conference is held for the purpose of determining the causes of the problem and possible solutions, with the following individuals present:

(A) The principal or his designee;

(B) The teacher;

(C) The school counselor;

(D) The parents, guardians, or persons in loco parentis; and

(E) The student, if appropriate.

(2) The failure of the parents, guardians, or persons in loco parentis to attend the conference provided for in this subsection (d) shall not prevent the conference from being held nor prevent any action from being taken as a result of that conference.

History. Acts 1999, No. 1281, § 1.

6-18-512. Seizure of hand-held laser pointers.

Each school district shall adopt a policy providing for the seizure by school personnel of hand-held laser pointers in the possession of students.

History. Acts 1999, No. 1408, § 2.

6-18-513. Parental notification.

(a) A school or school district shall comply with subsection (b) of this section if the school or school district with respect to a student under the age of eighteen (18):

(1) Makes a report to any law enforcement agency concerning student misconduct;

(2) Grants law enforcement personnel other than a school resource officer acting in the normal course and scope of his or her assigned duties access to a student; or

(3) Knows that a student has been taken into custody by law enforcement personnel during the school day or while under school supervision.

(b)(1) The principal or, in the principal's absence, the principal's designee shall make a reasonable, good faith effort to contact the student's parent, legal guardian, or other person having lawful control of the student by court order or person acting in loco parentis listed on student enrollment forms.

(2) The principal or designee shall give the parent, legal guardian, or other person having lawful control of the student under an order of court or person acting in loco parentis notice that the student has been reported to, interviewed by, or taken into custody by law enforcement personnel.

(3) If the principal or designee is unable to reach the parent, he or she shall make a reasonable, good faith effort to get a message to the parent to call either the principal or designee and leave both a day and an after-hours telephone number.

(c) Notification is not required if school personnel make a report or file a complaint based on suspected child abuse or neglect as required under § 12-12-507 or if student

access is granted to law enforcement personnel for purposes of investigation of suspected child abuse or neglect.

History Acts 2001, No. 1217, § 1.

6-18-601. Definition.

As used in this subchapter, unless the context otherwise requires, "public school fraternity, sorority, or other secret organization or society" means any type of organization or society which fosters undemocratic practices and seeks to perpetuate itself by taking in additional members from the pupils enrolled in that school or local school system on the basis of the decision of its membership rather than upon the free choice of any pupil in the school who is qualified by the rules of the school to fill the special aims of the organization or society.

History. Acts 1929, No. 171, § 1; Pope's Dig., § 3604; A.S.A. 1947, § 80-2001.

6-18-602. Penalty.

Any person, firm, or corporation violating any of the provisions of this subchapter shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100) for each and every offense.

History. Acts 1929, No. 171, § 7; Pope's Dig., § 3610; A.S.A. 1947, § 80-2007.

6-18-603. Unlawful organizations.

Any public school fraternity, sorority, or secret society or organization as defined in this subchapter is declared to be inimical to public free schools and therefore unlawful.

History. Acts 1929, No. 171, § 2; Pope's Dig., § 3605; A.S.A. 1947, § 80-2002.

6-18-604. Exclusions.

The provisions of this subchapter shall not apply to:

(1) Fraternities, sororities, or secret societies of the University of Arkansas, any state teachers' college, or other state-supported institutions of junior college rank, or rank above junior college, or senior high school students of national fraternities or sororities, nor to students of these institutions in their relation to such societies or organizations in these institutions;

(2) Any nonsecret society or organization authorized and sponsored by the public school authorities.

History. Acts 1929, No. 171, § 6; Pope's Dig., § 3609; A.S.A. 1947, § 80-2006.

6-18-605. Suspension or expulsion of members.

It shall be the duty of school directors and boards of education, school inspectors, and other corporate authority managing and controlling any of the public schools of the state to suspend or expel from the schools under their control any pupil who shall:

(1) Be or remain a member, promise to join, become a member, or solicit other persons to join, promise to join, or pledge to become a member of any such public school fraternity, sorority, or secret society or organization;

(2) Wear or display any insignia of such fraternity, sorority, or secret society or organization while in and attending public schools.

History. Acts 1929, No. 171, § 3; Pope's Dig., § 3606; A.S.A. 1947, § 80-2003.

6-18-606. Soliciting pledges.

It shall be unlawful from and after the passage of this act for any person not enrolled in a public school of this state to solicit any pupil enrolled in a public school of this state to join or pledge himself or herself to become a member of a public school fraternity, sorority, or secret society or organization, or to solicit any such pupil to attend a meeting thereof or any meeting where the joining of any public school fraternity, sorority, or secret organization shall be encouraged.

History. Acts 1929, No. 171, § 4; Pope's Dig., § 3607; A.S.A. 1947, § 80-2004.

6-18-607. Reference to unlawful organizations in publications.

It shall be unlawful for any public newspaper, periodical, or other publication to designate in its columns high school fraternity, sorority, or secret society or organization as defined in § 6-18-601, or refer to such fraternity, sorority, or secret society or organization in any published reference as a high school fraternity, sorority, or secret society or organization.

History. Acts 1929, No. 171, § 5; Pope's Dig., § 3608; A.S.A. 1947, § 80-2005.

6-18-1201. Title.

This subchapter shall be known and cited as the "Arkansas Student Publications Act".

History. Acts 1995, No. 1109, § 1.

6-18-1202. Written policy.

Each school board shall adopt rules and regulations in the form of a written student publications policy developed in conjunction with the student publication advisors and the appropriate school administrators, consistent with the other provisions of this subchapter, which shall include reasonable provisions for the time, place, and manner of distributing student publications.

History. Acts 1995, No. 1109, § 2.

6-18-1203. Students' right of expression.

Student publications policies shall recognize that students may exercise their right of expression, within the framework outlined in § 6-18-1202. This right includes expression in school-sponsored publications, whether such publications are supported financially by the school or by use of school facilities, or are produced in conjunction with a class, except as provided in § 6-18-1204.

History. Acts 1995, No. 1109, § 3.

6-18-1204. Prohibited publications.

Student publications policies shall recognize that truth, fairness, accuracy, and responsibility are essential to the practice of journalism, and that the following types of publications by students are not authorized:

(1) Publications that are obscene as to minors, as defined by state law;

(2) Publications that are libelous or slanderous, as defined by state law;

(3) Publications that constitute an unwarranted invasion of privacy, as defined by state law; or

(4) Publications that so incite students as to create:

(A) A clear and present danger of the commission of unlawful acts on school premises; or

(B) The violation of lawful school regulations; or

(C) The material and substantial disruption of the orderly operation of the school.

History. Acts 1995, No. 1109, § 4.

6-19-119. School bus passengers required to be seated.

(a) As used in this section, "school bus" shall mean any vehicle being used to convey children to and from school that is marked in both front and rear with the words "SCHOOL BUS" in plain lettering readable in daylight at a distance of at least two hundred feet (200') from the vehicle.

(b) The driver of a school bus shall not operate the school bus until every passenger is seated.

(c)(1) The superintendent of each public school in this state shall be responsible for ensuring that no school bus is scheduled to transport more students than can be reasonably seated in the school bus.

(2) Any superintendent who knowingly violates subdivision (c)(1) of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100).

History. Acts 2001, No. 1744, § 1.

6-21-107. Official computer use policy.

(a) The board of directors of each school district in this state shall develop and adopt a written policy concerning student and staff use of computers owned by the district. The written policy shall state that a system to prevent computer users from accessing material harmful to minors shall be established and maintained for all public access computers in the school district. The policy shall be implemented by August 1, 2001.

(b) The written policy shall include provisions for administration of punishment of students for violations of the policy with stiffer penalties for repeat offenders, and the same shall be incorporated into the district's written student discipline policy.

(c) Students shall sign a computer use agreement form outlining proper and improper use of public access computers prior to being allowed to access the computer equipment.

(d) For purposes of this section:

(1) "Harmful to minors" has the same meaning as prescribed in § 5-68-501; and

(2) "Public access computer" means a computer that:

(A) Is located in a public school or public library;

(B) Is accessible by a minor; and

(C) Is connected to any computer communication system such as, but not limited to, what is commonly known as the Internet.

History. Acts 1997, No. 801, § 1; 2001, No. 921, § 1.

6-21-111. Definitions.

(a) For purposes of this section:

(1) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(A) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

(B) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; and

(2) "Public access computer" means a computer that:

(A) Is located in a public school;

(B) Is frequently or regularly used directly by a minor; and

(C) Is connected to any computer communication system.

(b) A public school that provides a public access computer shall equip the computer with technology that seeks to prevent minors from gaining access to material that is harmful to minors or obtain Internet connectivity from an Internet service provider that provides filter services to limit access to material that is harmful to minors. Standards and rules for the enforcement of this subsection shall be prescribed by the State Board of Education.

(c) A school board by a majority vote and after an opportunity for a notice and comment period of at least thirty (30) calendar days may vote to exclude the public schools under its authority from the provisions of subsection (b) of this section.

History. Acts 2001, No. 1533, §§ 1, 2.

6-21-609. Prohibition against smoking or use of tobacco or tobacco products - Exception.

(a) Smoking or use of tobacco or products containing tobacco in any form in or on any property owned or leased by a public school district, including school buses, is prohibited.

(b) A copy of this statute shall be posted in a conspicuous location at every entrance to each building owned or leased by a public school district and every school bus used to transport public school students.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100).

History. Acts 1987, No. 854, §§ 1, 2; 1997, No. 779, § 1; 1999, No. 1555, § 1.

6-82-301. Legislative determinations.

The General Assembly recognizes that outstanding students are an essential ingredient for the economic and social benefit of the State of Arkansas. Benefits accrue to the state when a majority of National Merit Scholars, National Achievement Scholars, and superior students attend Arkansas institutions of higher learning and remain in the state.

History. Acts 1983 (Ex. Sess.), No. 59, § 1; A.S.A. 1947, § 80-5901. 2001, No. 1761, § 1.

6-82-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Academic ability" means the intellectual standing of a student. In determining superior academic ability, the Department of Higher Education shall examine the student's high records, competitive examination scores, and demonstrated leadership capabilities;

(2) "Approved institution" means a public or private college or university:

(A) Dedicated to educational purposes, located in Arkansas,

or located out of state and educating Arkansas residents in dentistry, optometry, veterinary medicine, podiatry, chiropractic, or osteopathy under agreement with the Board of Control for Southern Regional Education, accredited by an accrediting agency certified and recognized by the United States Department of Education or the Division of Agency Evaluation and Institutional Accreditation, or a school giving satisfactory assurance that it has the potential for accreditation and is making progress which, if continued, will result in its achieving accreditation;

(B) Which does not discriminate in the admission of students on the basis of race, color, religion, sex, or national origin; and

(C) Which subscribes to the principle of academic freedom;

(3) "Competitive examination" means a standardized examination measuring achievemnet which is administered annually on a specified date and at a specified location and which is announced publicly;

(4) "Department" means the Department of Higher Education;

(5) "Eligible student" means a resident of the State of Arkansas as defined by the Department of Higher Education who is eligible for admission as a full-time student and who declares an intent to matriculate in an approved institution in Arkansas;

(6)(A) "Extraordinary academic ability" means:

(i) Achievement of a score of 32 or above on the American College Test (ACT), or 1410 or above on the Scholastic Aptitude Test (SAT); and

(ii)(a) For students graduating from high school after December 31, 2001, achievement of a high school grade point average of 3.5 or above on a 4.0 scale, or

(b) Selection as a finalist in either the National Merit Scholarship competition or the National Achievement Scholarship competition conducted by the National Merit Scholarship Corporation.

(B) For students graduating after December 31, 2001, the American College Test scores and Scholastic Aptitude Test scores shall be earned by December 31 prior to the application deadline in order for the scores to be considered by the department for a scholarship award.

(7) "Full-time student" means a resident of Arkansas who is in attendance at an approved private or public institution and who is enrolled in at least twelve (12) credit

hours the first semester and fifteen (15) hours thereafter; or other reasonable academic equivalent as defined by the department;

(8) "Scholarship" means an award to an eligible student for matriculation in an approved institution in the State of Arkansas; and

(9) "Undergraduate student" means an individual who is enrolled in a postsecondary educational program which leads to or is directly creditable toward the individual's first baccalaureate degree.

History. Acts 1983 (Ex. Sess.), No. 59, § 3; 1985, No. 176, § 1; A.S.A. 1947, § 80-5903; Acts 1997, No. 489, § 1; No. 1269, § 2; 2001, No. 1761, § 2.

6-82-303. Establishment.

A scholarship program to promote academic excellence and to encourage the state's most talented graduates to enroll in Arkansas postsecondary educational institutions is created and established, which shall be cited as the "Arkansas Governor's Scholars Program."

History. Acts 1983 (Ex. Sess.), No. 59, §§ 1, 2; A.S.A. 1947, §§ 80-5901, 80-5902.

6-82-304. Administration - Authority of department.

The Department of Higher Education shall administer the Governor's Scholars Program and shall have the following authority and responsibility with respect to the program:

(1) To prepare application forms or such other forms as the department shall deem necessary to properly administer and carry out the purposes of this subchapter;

(2) To establish and consult as necessary with an advisory committee representing the public and private sectors of postsecondary education and secondary schools in determining guidelines and regulations for the administration of this program;

(3) To select recipients of scholarships awarded pursuant to the provisions of this subchapter;

(4) To establish the procedures for payment of scholarships to recipients;

(5) To set a termination date for acceptance of applications;

(6) To review and evaluate the operation of the program with regard to eligibility criteria and size of the scholarship award to ensure that the program's operation meets the intent of this legislation; and

(7) To determine the necessary procedures for the awarding of scholarships should the number of eligible applicants exceed the funds available.

History. Acts 1983 (Ex. Sess.), No. 59, § 6; A.S.A. 1947, § 80-5906. 2001, No. 1761, § 3.

6-82-305. Recipients known as Arkansas Governor's Scholars or Arkansas Governor's Distinguished Scholars.

(a) Students receiving scholarships shall be known as Arkansas Governor's Scholars.

(b) Arkansas Governor's Scholarship recipients who exhibit extraordinary academic ability shall be known as Arkansas Governor's Distinguished Scholars.

History. Acts 1983 (Ex. Sess.), No. 59, § 4; A.S.A. 1947, § 80-5904; Acts 1997, No. 489, § 2; 1999, No. 1562, § 1; 2001, No. 1761, § 4.

6-82-306. Eligibility.

(a) The Arkansas Governor's Scholars Program scholarships are to be awarded to those students who demonstrate the highest capabilities for successful college study.

(b) A student is eligible for this scholarship if:

(1) The individual has met the admission requirements and is accepted for enrollment as a full-time undergraduate student in an eligible public or private college or university in Arkansas;

(2) The individual is a bona fide resident of the state, as defined by the department. Preference will be given to students who plan to enter college at the beginning of the academic year directly following their last year of high school attendance;

(3) The individual is a citizen of the United States or a permanent resident alien;

(4)(A) The applicant has demonstrated proficiency in the application of knowledge and skills in reading and writing literacy and mathematics by passing the end-of-course examination as may be developed by the Department of Education, and as may be designated by the Department of Higher Education for this purpose.

(B) "End of course" examination shall mean those examinations defined in § 6-15-419(4); and

(5)(A) The individual satisfactorily meets the qualifications of superior academic ability as established by the department with such criteria consisting of value points for academic achievement and leadership, including, but not limited to:

(i) ACT or SAT score, National Merit Finalist, or National Achievement Finalist;

(ii) High school grade point average;

(iii) Rank in high school class; and

(iv) Leadership in school, community, and employment.

(B) The Department of Higher Education shall have the authority to alter the weight assigned to the individual criterion to more appropriately meet the needs of the state as determined by the Arkansas Higher Education Coordinating Board.

(c) The scholarship shall be weighed on the factors of achievement, ability, and demonstrated leadership capabilities.

(d) Students who are selected as Arkansas Governor's Scholars who also exhibit extraordinary academic ability as defined in this subchapter shall be designated as Arkansas Governor's Distinguished Scholars.

History. Acts 1983 (Ex. Sess.), No. 59, § 5; 1985, No. 176, § 2; A.S.A. 1947, § 80-5905; Acts 1997, No. 489, § 3; 1999, No. 1562, § 2; 2001, No. 1761, § 5.

6-82-308. Number and geographic distribution of scholarships.

(a) If sufficient funds are available, effective for students receiving their initial awards beginning in fall 2001, the number of initial scholarship awards to eligible high achievers shall not exceed two hundred seventy five (275) each year, to be distributed as follows:

(1) Up to two hundred fifty (250) Governor's Distinguished Scholarships; and

(2) Twenty five (25) Governor's Scholarships at four thousand dollars ($4,000) per year

(b)(1) Effective for students receiving their initial awards beginning in fall, 2002, up to two hundred fifty (250) initial Governor's Distinguished Scholarship and twenty-five (25) initial Governor's Scholarship awards may be made provided if, at the end of calendar year 2001 and each year thereafter, the Department of Higher Education can demonstrate, based on economic projections and revenue forecasts relative to the number of Academic Challenge recipients then receiving the scholarship, that sufficient funds are available for that purpose.

(2) A report of the same shall be submitted to the House and Senate Interim Committees on Education and the Legislative Council for review prior to obligating the funds.

(3) Should a shortfall of funds be projected, the department shall promulgate regulations for the priority funding of these scholarships and submit these proposed regulations to the Arkansas Higher Education Coordinating Board for a public hearing and to the

Legislative Council through its Rules and Regulations Subcommittee for review before implementing such regulations.

(c) The department is authorized to adjust the distribution of these scholarships to ensure one (1) award in each of the seventy-five (75) counties.

History. Acts 1983 (Ex. Sess.), No. 59, § 4; A.S.A. 1947, § 80-5904; Acts 1989, No. 951, § 1; 1997, No. 489, § 4; 2001, No. 1761, § 6.

6-82-311. Term, renewal, and allocation of scholarships.

(a) A scholarship may be awarded annually for a period not to exceed an academic year.

(b)(1) The scholarships shall correspond to academic terms, semesters, quarters, or equivalent time periods at the eligible institutions.

(2) In no instance may the entire amount of the grant for an educational year be paid to or on behalf of students in advance.

(c) Provided sufficient funds are available, the scholarship shall be awarded for one (1) academic year and renewed annually for three (3) additional academic years if the following conditions for renewal are met:

(1) The student maintains not less than a 3.0 grade point average on a 4.0 scholastic grading scale;

(2) A student receiving the additional scholarship under § 6-82-312(b) maintains not less than a 3.25 grade point average on a 4.0 scholastic grading scale;

(3) The recipient has completed a total of at least twenty-seven (27) hours during the first full academic year and, if applicable, a total of at least thirty (30) hours per academic year thereafter;

(4) If the student is entering the junior year, the student has taken the standardized rising junior test provided for in § 6-61-114; and

(5) The recipient has met any other continuing eligibility criteria established by the Department of Higher Education.

History. Acts 1983 (Ex. Sess.), No. 59, §§ 4, 6; A.S.A. 1947, §§ 80-5904, 80-5906; Acts 1997, No. 489, § 5; 1999, No. 1562, § 3; 2001, No. 1761, § 7.

6-82-312. Scholarship amounts.

(a) Scholarships awarded to new recipients who enroll in college as first-time entering freshmen after July 1, 1995, shall be in the amount of four thousand dollars ($4,000) per year, provided funds are available.

(b) Provided sufficient funds are available, students who were first-time entering freshmen after July 1, 1997, but before July 1, 2002, and who exhibit extraordinary academic achievement shall be awarded, in addition to the award in subsection (a) of this section, an amount per year which when combined with the award in subsection (a) of this section equals tuition, room and board, and mandatory fees charged in academic year 2000-2001 for a regular full-time course load by the approved institution in which the recipient is enrolled.

(c) Provided sufficient funds are available, students who are first-time entering freshmen after July 1, 2002, and who exhibit extraordinary academic achievement shall be awarded, in addition to the award in subsection (a) of this section, an amount per year which when combined with the award in subsection (a) of this section, equals the lesser of:

(1) Ten thousand dollars ($10,000); or

(2) Tuition, room and board, and mandatory fees charged for a regular full-time course load in academic year 2000-2001 by the approved institution in which the recipient is enrolled.

History. Acts 1983 (Ex. Sess.), No. 59, § 4; A.S.A. 1947, § 80-5904; Acts 1989, No. 951, § 2; 1995, No. 189, § 1; 1995, No. 230, § 1; 1997, No. 489, § 6; 1999, No. 1562, § 4; 2001, No. 1761, § 8.

6-82-1002. Definitions.

For purposes of this subchapter, the following terms shall be defined as indicated:

(1)(A) "Approved institution" means a public or private college or university located in Arkansas that is accredited by the North Central Association, Commission on Institutions of Higher Education, or that certifies to the Department of Higher Education that its students are accepted for transfer at institutions accredited by the North Central Association, Commission on Institutions of Higher Education.

(B) Further, an approved institution shall not discriminate against applicants, students, or employees on the basis of race, color, religion, sex, age, disability, or national origin, consistent with the provisions of applicable state and federal law;

(2) "Eligible student" means any student who meets the criteria set out by this subchapter and is deemed to be eligible by rules and regulations authorized by this subchapter and promulgated by the Department of Higher Education;

(3) "Financial need" means the family income of program applicants as determined by the Department of Higher Education through evaluation of program applications and supporting documentation;

(4) "Full-time undergraduate student" means a resident of Arkansas who attends an approved institution of higher education and is enrolled for at least twelve (12) credit hours the first semester and fifteen (15) hours thereafter or the equivalent, as defined by the Department of Higher Education, in a program of study which leads to or is creditable toward a baccalaureate degree;

(5) "Recipient" means an applicant awarded a scholarship funded through the Academic Challenge Scholarship Program;

(6) "Tuition" means charges levied for attendance at an eligible institution of higher education including mandatory fees charged to all full-time students by an approved institution; and

(7) "Unemancipated child" or "unemancipated children" means a dependent child or dependent children as defined by the United States Department of Education for student aid purposes.

History. Acts 1991, No. 352, § 3; 1991, No. 362, § 3; 1997, No. 208, § 4; 1999, No. 858, §§ 1, 2; 2001, No. 1664, § 1; 2001, No. 1836, § 1.

6-82-1003. Creation.

There is hereby created and established the Arkansas Academic Challenge Scholarship Program.

History. Acts 1991, No. 352, § 2; 1991, No. 362, § 2; 2001, No. 1836, § 2.
6-82-1005. Eligibility.

6-82-1005. Eligibility.

(a) Eligibility for the Arkansas Academic Challenge Scholarship Program shall be based on the criteria set forth in this section as well as program rules and regulations adopted pursuant to this subchapter by the Department of Higher Education.

(b) An applicant shall be eligible for an award from this program if the applicant meets all of these criteria:

(1) The applicant graduated from an Arkansas high school on or after March 5, 1991;

(2) The applicant has been a resident of the State of Arkansas for at least twelve (12) months prior to graduation from an Arkansas high school, and the applicant's parent or

parents or guardian or guardians have maintained Arkansas residency for the same period of time;

(3) The applicant is a citizen of the United States or is a permanent resident alien;

(4) The applicant is accepted for admission at an approved institution of higher education as a full-time first-time freshman as defined by the department and enrolls in an approved institution within twelve (12) months of the applicant's high school graduation;

(5)(A)(i) Except as provided in subsection (b)(5)(B) of this section, the applicant has successfully completed the core curriculum established by the State Board of Education and the Arkansas Higher Education Coordinating Board pursuant to § 6-61-217.

(ii) An applicant who graduates from an Arkansas high school after December 31, 2001 and who meets the provisions of subdivisions (b)(1)-(4) of this section, but who has not completed the core curriculum defined in subdivision (b)(5)(A) of this section by the end of the senior year of high school due to the unavailability of the courses in the applicant's high school shall have a grace period of twelve (12) months from the date of high school graduation in which to make up any course deficiencies required for program eligibility; and

(B)(i) The applicant has demonstrated proficiency in the application of knowledge and skills in reading and writing literacy and mathematics by passing the end-of-course examinations as may be developed by the Department of Education and as may be designated by the Department of Higher Education for this purpose.

(ii) "End-of-course" examinations shall mean those examinations defined in § 6-15-419(4).

(6)(A) The applicant who graduates from an Arkansas high school after December 31, 2001 must have achieved the following:

(i) A grade point average of 3.0 on a 4.0 scale in the set of core curriculum courses if enrolling at an approved four-year institution; or

(ii) A grade point average of 2.75 on a 4.0 scale in the set of core curriculum courses if enrolling at an approved two-year institution.

(iii)(a) These revised grade point average requirements may be reduced to no lower than a 2.5 on a 4.0 scale by a rules change by the department, if it is determined by the department, based on the most recent evaluation of the program's operation, that the change to a 3.0 or 2.75 grade point average on a 4.0 scale would unduly reduce the number of low-income or disadvantaged students who would otherwise be eligible for the program.

(b) At the department's discretion, the department may make such a reduction for admissions to institutions with a high percentage of students receiving full Pell grants, upon petition to the department by the institution.

(B) The applicant scored nineteen (19) or above on the American College Test composite or the equivalent as defined by the department.

(C)(i) The department is authorized to develop selection criteria through program rules and regulations which combine an applicant's American College Test or equivalent score and grade point average in the core curriculum into a selection index.

(ii) Notwithstanding the provisions of subdivisions (b)(6)(A) and (b)(6)(B) of this section, this selection index shall be employed as an alternative selection process for applicants who achieve a grade point average above 2.75 if attending an approved two-year institution or 3.0 if attending a four-year institution on a 4.0 scale in the set of core curriculum courses defined in subdivision (b)(5)(A) of this section, or for applicants who have an American College Test composite or equivalent score greater than nineteen (19).

(D)(i) The applicant demonstrates financial need as defined by the department.

(ii) In calculating financial need for applicants who graduate from an Arkansas high school after December 31, 1998, but before January 1, 2001, the following criteria shall be used:

(a) An applicant whose family includes one (1) unemancipated child shall have average family adjusted gross income over the previous two (2) years not exceeding seventy thousand dollars ($70,000) per year at the time of application to the program;

(b) An applicant whose family includes two (2) unemancipated children shall have average family adjusted gross income over the previous two (2) years not exceeding seventy-five thousand dollars ($75,000) per year at the time of application to the program;

(c) An applicant whose family includes three (3) or more unemancipated children shall have average family adjusted gross income over the previous two (2) years not exceeding eighty thousand dollars ($80,000) per year at the time of application to the program, plus for families with more than three (3) unemancipated children, an additional five thousand dollars ($5,000) per year for each additional child;

(d) Any applicant whose family includes more than one (1) unemancipated child enrolled full time at an approved institution of higher education shall be entitled to an additional ten thousand dollars ($10,000) of adjusted gross income for each additional child when the department calculates financial need; and

(e) If the applicant is an adopted child who was at least twelve (12) years of age at the time of adoption and if the applicant's family includes unemancipated adopted children

who were at least twelve (12) years of age at the time of adoption, the adoptive family shall be entitled to an additional ten thousand dollars ($10,000) of adjusted gross income per adopted unemancipated child.

(iii) In calculating financial need for applicants who graduate from an Arkansas high school after December 31, 2000, the following criteria shall be used:

(a) An applicant whose family includes one (1) unemancipated child shall have average family adjusted gross income over the previous two (2) years not exceeding fifty thousand dollars ($50,000) per year at the time of application to the program;

(b) An applicant whose family includes two (2) unemancipated children shall have average family adjusted gross income over the previous two (2) years not exceeding fifty-five thousand dollars ($55,000) per year at the time of application to the program;

(c) An applicant whose family includes three (3) or more unemancipated children shall have average family adjusted gross income over the previous two (2) years not exceeding sixty thousand dollars ($60,000) per year at the time of application to the program plus for families with more than three (3) unemancipated children, an additional five thousand dollars ($5,000) per year for each additional child; and

(d) Any applicant whose family includes more than one (1) unemancipated child enrolled full time at an approved institution of higher education shall be entitled to an additional ten thousand dollars ($10,000) of adjusted gross income for each additional child when the department calculates financial need.

(c)(1) The Arkansas Higher Education Coordinating Board shall have the authority to increase these financial need family income limitations if sufficient additional funds become available.

(2) Financial need criteria necessary for the selection of recipients, including those defined as emancipated or independent by federal student aid regulations, shall be established through rules and regulations issued by the department.

(d) Receipients of Arkansas Governor's Distinguished Scholarships are prohibited from receiving Academic Challenge scholarships.

History. Acts 1991, No. 352, § 4; 1991, No. 362, § 4; 1991, No. 733, §§ 1, 2; 1992 (1st Ex. Sess.), No. 47, §§ 2, 3; 1993, No. 1170, § 3; 1993, No. 1244, §§ 1, 2; 1995, No. 1296, § 38; 1997, No. 977, § 5; 1999, No. 858, §§ 4-9; 2001, No. 1836, § 3.

6-82-1006. Duration - Amount.

(a) A recipient who graduated from high school before January 1, 2001, shall receive a scholarship for one (1) academic year renewable for up to three (3) additional academic

years if the recipient meets continuing eligibility criteria established by the Department of Higher Education and if sufficient funds are available for that purpose.

(b) A recipient who graduated from high school after December 31, 2000, shall receive a scholarship for one (1) academic year renewable for up to three (3) additional academic years if the recipient meets the following continuing eligibility criteria:

(1) The recipient earns a cumulative grade point average of 2.75 or above on a 4.0 scale at an approved institution;

(2) The recipient has completed a total of at least twenty-seven (27) hours during the first full academic year and a total of at least thirty (30) hours per academic year thereafter;

(3) If the student is entering the junior year, the student has taken the standardized rising junior test provided for in § 6-61-114; and

(4) The recipient meets any other continuing eligibility criteria established by the department.

(c)(1) For recipients who graduated from high school between January 1, 1995, and December 31, 1996, the amount of the annual scholarship awarded to each recipient shall be the lesser of one thousand five hundred dollars ($1,500) or the annual tuition charged by the approved institution in which the recipient is enrolled.

(2) For recipients who graduated from high school between January 1, 1997, and December 31, 1998, the amount of the annual scholarship awarded to each recipient shall be the lesser of two thousand five hundred dollars ($2,500) or the annual tuition charged by the approved institution in which the recipient is enrolled.

(3) For new recipients who graduated from high school after December 31, 1998, the amount of the annual scholarship awarded to each recipient shall be two thousand five hundred dollars ($2,500).

History. Acts 1991, No. 352, § 5; 1991, No. 362, § 5; 1995, No. 188, §§ 1, 2; 1995, No. 228, §§ 1, 2; 1997, No. 488, § 1; 1999, No. 858, §§ 10, 13; 2001, No. 1553, § 16; 2001, No. 1836, § 4.

JUVENILE PROCEEDINGS

9-27-301. Title.

This subchapter shall be known and may be cited as the "Arkansas Juvenile Code of 1989".

History. Acts 1989, No. 273, 1;

9-27-302. Purposes - Construction.

This subchapter shall be liberally construed to the end that its purposes may be carried out:

(1) To assure that all juveniles brought to the attention of the courts receive the guidance, care, and control, preferably in each juvenile's own home when the juvenile's health and safety are not at risk, which will best serve the emotional, mental, and physical welfare of the juvenile and the best interest of the state;

(2)(A) To preserve and strengthen the juvenile's family ties when it is in the best interest of the juvenile;

(B) To protect a juvenile by considering the juvenile's health and safety as the paramount concerns in determining whether or not to remove the juvenile from the custody of his parents or custodians, removing the juvenile only when the safety and protection of the public cannot adequately be safeguarded without such removal;

(C) When a juvenile is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents, with primary emphasis on ensuring the health and safety of the juvenile while in the out-of-home placement; and

(D) To assure, in all cases in which a juvenile must be permanently removed from the custody of his parents, that the juvenile be placed in an approved family home and be made a member of the family by adoption;

(3) To protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation and rehabilitative restitution, recognizing that the application of sanctions which are consistent with the seriousness of the offense is appropriate in all cases; and

(4) To provide means through which the provisions of this subchapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

History. Acts 1989, No. 273, § 2; 1999, No. 401, § 1.

9-27-303. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Abandoned infant" means a juvenile less than nine (9) months of age and whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant:

(2) "Abandonment" means the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact, when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, and failure to support or maintain regular contact with the juvenile without just cause or an articulated intent to forego parental responsibility;

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, chld care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme or repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

(iv) Any injury which is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b>) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face;

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child age six (6) or younger on the face;

(b) Shaking a child age three (3) or younger; or

(c) Interfering with a child's breathing.

(B)(i) This list is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" shall not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. Abuse shall not include when a child suffers transient pain or minor temporary marks as a result of a reasonable restraint if:

(a) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger of hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, deescalation, and conflict resolution techniques; and

(f) The restraint is for a reasonable period of time.

(ii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks.

(iii) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) "Adjudication hearing" means a hearing to determine whether the allegations in a petition are substantiatied by the proof;

(5) "Adult sentence" means punishment authorized by the Arkansas Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-507, for the act or acts for which the juvenile was adjudicated delinquent as an extended juvenile juristiction offender;

(6) "Aggravated circumstances" means a child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, or sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification;

(7) "Attorney ad litem" means an attorney appointed to represent the best interest of a juvenile;

(8) "Caretaker" means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;

(9) "Case plan" means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;

(10) "Commitment" means an order of the court which places a juvenile in the custody of the Division of Youth Services of the Department of Human Services for placement in a youth services facility;

(11) "Court" or "juvenile court" means the juvenile division of chancery court;

(12) "Court-appointed special advocate" means a volunteer appointed by the court to provide services to juveniles in dependency-neglect proceedings;

(13) "Custodian" means a person, other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order;

(14) "Delinquent juvenile" means any juvenile:

(A) Ten (10) years or older who has committed an act other than a traffic offense or game and fish violation which, if such act had committed by an adult, would subject such adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state or who has violated § 5-73-119; or

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

(15)(A) "Department" means the Department of Human Services and its divisions and programs.

(B) Unless otherwise stated in this subchapter, any reference to the Department of Human Services shall include all of its divisions and programs;

(16)(A) "Dependent-neglected juvenile" means any juvenile who as a result of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness to the juvenile, a sibling, or another juvenile is at substantial risk of serious harm.

(B) The term "dependent-neglected juvenile" means:

(i) A child of a parent who is under the age of eighteen (18) years and is in the custody of the department;

(ii) A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(iii) A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile, and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(iv) A child whose custodial parent dies and no stand-by guardian exists; or

(v) A child who is an infant relinquished to the custody of the department for the sole purpose of adoption or safe haven babies;

(17) "Detention" means the temporary care of a juvenile in a physically restricting facility, other than a jail or lock-up used for the detention of adults, prior to an adjudication hearing for delinquency or pending commitment pursuant to an adjudication of delinquency;

(18) "Detention hearing" means a hearing held to determine whether a juvenile accused or adjudicated of committing a delinquent act or acts should be released or held prior to adjudication or disposition;

(19) "Deviant sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(20) "Disposition hearing" means a hearing held following an adjudication hearing to determine what action will be taken in delinquency, family in need of services, or dependent-neglected cases;

(21) "Extended juvenile jurisdiction offender" means a juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the juvenile court;

(22) "Family in need of services" means any family whose juvenile evidences behavior which includes, but is not limited to, the following:

(A) Being habitually and without justification absent from school while subject to compulsory school attendance;

(B) Being habitually disobedient to the reasonable and lawful commands of his or her parent, guardian, or custodian; or

(C) Having absented himself or herself from the juvenile's home without sufficient cause, permission, or justification;

(23)(A) "Family services" means relevant services provided to a juvenile or his or her family, including, but not limited to:

(i) Child care;

(ii) Homemaker services;

(iii) Crisis counseling;

(iv) Cash assistance;

(v) Transportation;

(vi) Family therapy;

(vii) Physical, psychiatric, or psychological evaluation;

(viii) Counseling; or

(ix) Treatment.

(B) Family services are provided in order to:

(i) Prevent a juvenile from being removed from a parent, guardian, or custodian;

(ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed; or

(iii) Implement a permanent plan of adoption, guardianship, or rehabilitation of the juvenile;

(24)(A) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person.

(B) If the act was committed against the will of the juvenile, then "forcible compulsion" has been used.

(C) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(25) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(26)(A) "Home study" means a written report which is obtained after an investigation of a home by the department or other appropriate persons or agencies and which shall conform to regulations established by the department.

(B)(i) An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within thirty (30) working days of the receipt of the request for the home study.

(ii) The results of the criminal records check shall be provided to the court as soon as they are received;

(27) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person, or of any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(28) "Independence" means a permanency planning hearing disposition for the juvenile who will not be reunited with his family because another permanent plan is not available; and

(A) A compelling reason exists why termination of parental rights is not in the juvenile's best interest; or

(B) The juvenile is being cared for by a relative and termination of parental rights is not in the best interest of the juvenile;

(B) The juvenile is being cared for by a relative and termination of parental rights is not in the best interest of the juvenile;

(29) "Juvenile" means an individual who:

(A) Is from birth to the age of eighteen (18) years, whether married or single;

(B)(i) Is under the age of twenty-one (21) years, whether married or single, who is adjudicated delinquent for an act committed prior to the age of eighteen (18) years and for whom the court retains jurisdiction.

(ii) In no event shall this person remain within the court's jurisdiction past the age of twenty-one (21) years; or

(C)(i) Is adjudicated dependent-neglected before reaching the age of eighteen (18) years.

(ii) The juvenile may ask the court to retain jurisdiction past his eighteenth birthday.

(iii) The court shall grant the request only if the juvenile is engaged in a course of instruction or treatments.

(iv) The court shall retain jurisdiction only if the juvenile remains in instruction or treatment.

(v) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes, leaves or is dismissed from instruction or treatment.

(vi) In no event shall this person remain within the court's jurisdiction past the age of twenty-one (21) years;

(30) "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;

(31) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses;

(32) "Miranda rights" means the requirement set out in Miranda v. Arizona, 384 US 436(1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

(33) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private, or any person legally responsible under state law for the juvenile's welfare, which constitute:

(A) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

(B) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, excluding failure to follow an individualized education program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected;

(C) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of this condition was known or should have been known;

(D) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile;

(E) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(F) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume such responsibility; or

(G) Failure to appropriately supervise the juvenile which results in the juvenile's being left alone at an inappropriate age or inappropriate circumstances which put the juvenile in danger;

(34)(A) "Notice of hearing" means a notice which describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for appointment of counsel if indigent, or a uniform notice as developed and prescribed by the Arkansas Supreme Court.

(B) The notice of hearing shall be served in the manner provided for service under the Arkansas Rules of Civil Procedure;

(35) "Order to appear" means an order issued by the court directing a person who may be subject to the court's jurisdiction to appear before the court at a date and time as set forth in the order;

(36)(A) "Out-of-home placement" means:

(i) Placement in a home or facility other then placement in a youth services center, a detention facility, or the home of a parent or guardian of the juvenile; or

(ii) Placement in the home of an individual other than a parent or guardian, not including any placement where the court has ordered that the placement be made

permanent and ordered that no further reunification services or six-month reviews are required.

(B) "Out-of-home placement" shall not include placement in a youth services center or detention facility as a result of a finding of delinquency;

(37) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found, by a court of competent jurisdiction, to be the biological father of the juvenile;

(38) "Paternity hearing" means a proceeding brought pursuant to bastardy jurisdiction to determine the biological father of a juvenile;

(39) "Pornography" means:

(A) Obscene or licentious material, including pictures, movies, and videos, lacking serious literary, artistic, political, or scientific value, which when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest; or

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value;

(40)(A) "Predisposition report" means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any disability, the name of the juvenile's attorney, and, if appointed by the court, the date of the appointment, any participation by the juvenile or his or her family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile, and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family.

(B) The predisposition report shall include a home study of any out-of-home placement which may be part of the disposition;

(41) "Prosecuting attorney" means an attorney who is elected, as district prosecuting attorney, the duly appointed deputy prosecuting attorney, or any city prosecuting attorney;

(42) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile who claims or is alleged to be the biological father of the juvenile;

(43)(A)(i) "Reasonable efforts" means efforts to preserve the family prior to the placement of a child in foster care to prevent the need for removing the child from his or

her home and efforts to reunify a family made after a child is placed out of home to make it possible for him or her to safely return home.

(ii) Reasonable efforts shall also be made to obtain permanency for a child who has been in an out-of-home placement for more than twelve (12) months or for fifteen (15) of the previous twenty-two (22) months.

(iii) In determining whether or not to remove a child from a home or return a child back to a home, the child's health and safety shall be the paramount concern.

(iv) The department or other appropriate agency shall exercise reasonable diligence and care to utilize all available services related to meeting the needs of the juvenile and the family.

(B) The juvenile court may deem that reasonable efforts have been made when the juvenile court has found the first contact by the department occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided.

(C) Reasonable efforts to reunite a child with his parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

(i) Subjected the child to aggravated circumstances;

(ii) Committed murder of any child;

(iii) Committed voluntary manslaughter of any child;

(iv) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter;

(v) Committed a felony battery or assault that results in serious bodily injury to any child; or

(vi) Had the parental rights involuntarily terminated as to a sibling of the child; or

(vii) Abandoned an infant as defined in subdivision (1) of this section.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

(44)(A) "Restitution" means actual economic loss sustained by an individual or entity as a proximate result of the delinquent acts of a juvenile.

(B) Such economic loss shall include, but not be limited to, medical expenses, funeral expenses, expenses incurred for counseling services, lost wages, and expenses for repair or replacement of property;

(45) "Sexual abuse" means:

(A) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion or attempted sexual intercourse, deviate sexual activity, indecent exposure, or forcing, permitting, or encouraging the watching of pornography or live human sexual activity, or sexual contact by forcible compulsion by a person ten (10) years of age or older to a person younger than eighteen (18) years of age;

(B) Sexual intercourse, deviate sexual activity, or sexual contact or solicitation or attempted sexual intercourse, deviate sexual activity, or sexual contact that occurs between a person eighteen (18) years of age or older and a person not his or her spouse who is younger than sixteen (16) years of age; or

(C) Sexual intercourse, deviate sexual activity, or sexual contact or solicitation or attempted sexual intercourse, deviate sexual activity, or sexual contact between a person younger than eighteen (18) of age and a sibling or caretaker;

(46)(A)(i) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.

(ii) Nothing in this section shall permit normal, affectionate hugging to be construed as sexual contact;

(47) "Sexual exploitation" includes allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting a juvenile for any use or purpose;

(48) "Shelter care" means the temporary care of a juvenile in physically unrestricting facilities pursuant to an order for placement pending or pursuant to an adjudication of dependency-neglect or family in need of services;

(49) "UCCJA" means the Uniform Child Custody Jurisdiction Act, § 9-13-201 et seq. [repealed];

(50) "UCCJEA" means the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(51) "UIFSA" means the Uniform Interstate Family Support Act, § 9-17-101 et seq.;

(52) "Victim" means any person or entity entitled to restitution as defined in subdivision (43) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

(53) "Voluntary relinquishment of custody" means a written agreement between a parent and the department for the temporary placement of a child in an out-of-home placement pursuant to § 9-27-340 [repealed];

(54) "Youth services center" means a youth services facility operated by the state or contract provider; and

(55) "Youth services facility" means a facility, operated by the state or its designee, for the care of juveniles who have been adjudicated delinquent or convicted of a crime and who require secure custody in either a physically restrictive facility or a staff-secured facility operated so that a juvenile may not leave the facility unsupervised or without supervision.

History. Acts 1989, No. 273, § 3; 1993, No. 468, § 4; 1993, No. 1126, §§ 1, 2; 1993, No. 1227, § 1; 1994 (2nd Ex. Sess.), No. 11, § 1; 1994 (2nd Ex. Sess.), No. 36, § 1; 1995, No. 532, §§ 1-4; 1995, No. 804, § 1, 1995, No. 811, § 2; 1995, No. 1261, § 13; 1997, No. 208, § 8; 1997, No. 1227, § 1; 1999, No. 401, §§ 2-4; 1999, No. 1192, § 12; 1999, No. 1340, §§ 1-7, 35. 2001, No. 1503, § 1; 2001, No. 1610, § 1.

9-27-306. Jurisdiction.

(a) The juvenile court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter:

(1) Proceedings in which a juvenile is alleged to be delinquent or dependent-neglected as defined in this subchapter;

(2) Proceedings in which a family is alleged to be in need of services as defined in this subchapter;

(3) Proceedings for termination of parental rights for a juvenile who is under the jurisdiction of the juvenile court;

(4) Proceedings in which custody of a juvenile is transferred to the Department of Human Services.

(b) The juvenile court shall have exclusive jurisdiction of the following matters governed by other law which arise during pendency of original proceedings under subsection (a) of this section and involve the same juvenile:

(1) Adoptions under the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(2) Guardianships under § 28-65-201 et seq.; or

(3) Uniform Interstate Family Support Act proceedings, § 9-17-101 et seq.

(c) The juvenile court shall have concurrent jurisdiction with probate court for civil commitment of juveniles.

(d) The juvenile court shall have concurrent jurisdiction with the chancery court for proceedings for the establishment of paternity, custody, visitation, or support of a juvenile alleged to be illegitimate.

(e)(1) The juvenile court shall have concurrent jurisdiction with municipal court for juvenile curfew ordinance violations.

(2) The prosecuting authority may file a family in need of services petition in juvenile court or a citation in municipal court.

(f) The juvenile court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state which are transferred to it pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

History. Acts 1989, No. 273, § 5; 1993, No. 468, § 5; 1995, No. 533, § 1. 2001, No. 987, § 1; No. 1262, § 1.

9-27-309. Confidentiality of records.

(a) All records may be closed and confidential within the discretion of the court, except:

(1) Adoption records shall be closed and confidential as provided in the Revised Uniform Adoption Act, as amended, § 9-9-201 et seq.;

(2) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult or to determine if the juvenile should be tried as an adult; and

(3) Records of delinquency adjudications for a juvenile adjudicated delinquent for any felony or a Class A misdemeanor wherein violence or a weapon was involved shall be made available to the Arkansas Crime Information Center.

(b)(1)(A) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be kept for ten (10) years after the last adjudication of delinquency or the date of a plea of guilty or nolo contendere or a finding

of guilt as an adult.

(B) Thereafter they may be expunged.

(2) The court may expunge other juvenile records at any time and shall expunge all the records of a juvenile upon his twenty-first birthday, in other types of delinquency, dependency-neglect, or families in need of services cases.

(3) For purposes of this section, "expunge" means to destroy.

(c) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult, or until the juvenile's twenty-first birthday, whichever is longer.

(d)(1) If an adult criminal sentence is imposed on an extended juvenile jurisdiction offender, the record of that case shall be considered an adult criminal record.

(2)(A) The juvenile court shall enter an order transferring the juvenile record to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a circuit docket number and shall maintain the file as if the case had originated in circuit court.

(e) Nothing in this section applies to or restricts the use or publication of statistics, data, or other materials which summarize or refer to any records, reports, statements, notes, or other information in the aggregate and which do not refer to or disclose the identity of any juvenile defendant in any proceeding when used only for the purpose of research and study.

(f) Nothing in this subchapter shall preclude prosecuting attorneys or the juvenile court from providing information, upon written request, concerning the disposition of juveniles who have been adjudicated delinquent to:

(1) The victim or his next of kin; or

(2) The school superintendent of the school district in which the juvenile is currently enrolled.

(g) When a juvenile is adjudicated delinquent for an offense for which he could have been charged as an adult or for unlawful possession of a handgun, § 5-73-119, the prosecuting attorney shall notify the school superintendent of the school district in which the juvenile is currently enrolled.

(h) Information provided pursuant to subsections (f) and (g) of this section shall not be released in violation of any state or federal law protecting the privacy of the juvenile.

(i)(1) If a juvenile is arrested for unlawful possession of a firearm under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or battery in the first degree under § 5-13-201, the arresting agency shall as soon as practical and with all reasonable haste cause written notification of the arrest to be given to the superintendent of the school district in which the juvenile is currently enrolled.

(2)(A) The superintendent shall then notify the principal and the resource officer of the school in which the juvenile is currently enrolled.

(B) The arrest information shall be treated as confidential information and shall not be disclosed by the superintendant to any person other than the principal and resource officer, who shall also maintain the information as confidential.

(3) The arrest information shall be used by the school only for the limited purpose of obtaining services for the juvenile or to ensure school safety.

History. Acts 1989, No. 273, § 8; 1993, No. 535, § 3; 1993, No. 551, § 3; 1993, No. 758, § 4; 1994 (2nd Ex. Sess.), No. 69, § 1; 1994 (2nd Ex. Sess.), No. 70, § 1; 1999, No. 1192, § 13; 1999, No. 1451, § 1. 2001, No. 1268, § 1.

9-27-313. Taking into custody.

(a)(1) A juvenile may be taken into custody without a warrant prior to service upon him of a petition and notice of hearing or order to appear as set out under § 9-27-312, only:

(A) Pursuant to an order of the court under this subchapter;

(B) By a law enforcement officer without a warrant under circumstances as set forth in Arkansas Rules of Criminal Procedure, Rule 4.1; or

(C) By a law enforcement officer or by a duly authorized representative of the Department of Human Services if there are clear, reasonable grounds to conclude that the juvenile is in immediate danger and that removal is necessary to prevent serious harm from his surroundings or from illness or injury and if parents, guardians, or others with authority to act are unavailable or have not taken action necessary to protect the juvenile from the danger and there is not time to petition for and obtain an order of the court prior to taking the juvenile into custody.

(2) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(b)(1) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the judge of the division of circuit court out of which the warrant was issued and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(2) The judge shall decide whether jurisdiction is in juvenile division or criminal division of circuit court pursuant to § 9-27-318.

(c) When a law enforcement officer, representative of the department, or other authorized person takes custody of a juvenile alleged to be dependent-neglected or pursuant to the child abuse reporting act, § 12-12-501 et seq., he or she shall:

(1)(A) Notify the department and make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location.

(B) The notification to the parents shall be in writing and shall include a notice:

(i) That the juvenile has been taken into foster care;

(ii) Of the name, location, and phone number of the person at the department whom they can contact about the juvenile;

(iii) Of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter;

(iv) Of the location and telephone number of the court; and

(v) The procedure for obtaining a hearing; or

(2) Return the juvenile to his or her home.

(d)(1)(A) A law enforcement officer shall take a juvenile to detention, immediately make every effort to notify the custodial parent, guardian, or custodian of the juvenile's location, and notify the juvenile court intake officer within twenty-four (24) hours so that a petition may be filed if a juvenile is taken into custody for:

(i) Unlawful possession of a handgun, § 5-73-119(a)(1)(A);

(ii) Possession of a handgun on school property, § 5-73-119(a)(2)(A);

(iii) Unlawful discharge of a firearm from a vehicle, § 5-74-107; or

(iv) Any felony committed while armed with a firearm; or

(v) Criminal use of a prohibited weapon, § 5-73-104.

(B) The authority of a juvenile intake officer to make a detention decision pursuant to § 9-27-322 shall not apply when a juvenile is detained pursuant to subdivsion (d)(1)(A) of this section.

(C) A detention hearing shall be held by the court pursuant to § 9-27-326 within seventy-two (72) hours after the juvenile is taken into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day.

(2) If a juvenile is taken into custody for an act that would be a felony if committed by an adult, other than a felony listed in subdivision (d)(1)(A) of this section, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A)(i) Take the juvenile to detention.

(ii) The intake officer shall be notified immediately to make a detention decision pursuant to § 9-27-322 within twenty-four (24) hours of the time the juvenile was first taken into custody, and the prosecuting attorney shall be notified within twenty-four (24) hours.

(iii) If the juvenile remains in detention, a detention hearing shall be held no later than seventy-two (72) hours after the juvenile is taken into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his parents to appear for a first appearance before the juvenile court and release the juvenile and, within twenty-four (24) hours, notify the juvenile intake officer and the prosecuting attorney so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his home.

(3) If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A) Notify the juvenile intake officer, who shall make a detention decision pursuant to § 9-27-322; or

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the juvenile court and release the juvenile and, within twenty-four (24) hours, notify the juvenile intake

officer and the prosecuting attorney so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his home.

(4)(A) In all instances when a juvenile may be detained, the juvenile may be held in a juvenile detention facility or a seventy-two-hour holdover, if a bed is available therein.

(B) If not, an adult jail or lock-up may be used, as provided by § 9-27-336.

(5) In all instances when a juvenile may be detained, the intake officer shall immediately make every effort possible to notify the juvenile's custodial parent, guardian, or custodian.

(e) When a law enforcement officer takes custody of a juvenile under this subchapter for reasons other than those specified in subsection (c) of this section concerning dependent-neglected juveniles, or subsection (d) of this section concerning delinquency, he or she shall:

(1)(A)(i) Take the juvenile to shelter care, notify the department and the intake officer of the juvenile court, and immediately make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location.

(ii) The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter, of the location and telephone number of the court, and the procedure for obtaining a hearing;

(B)(i) In cases when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or out-of-state and the juvenile has been absent from his home or domicile for more than twenty-four (24) hours, the juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(iii) A juvenile held under subdivision (e)(1)(B) of this section must be separated from detained juveniles charged or held for delinquency.

(iv) A juvenile may not be held under subdivision (e)(1)(B) of this section for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out-of-state; or

(3) Return the juvenile to his or her home.

(f) If no petition to adjudicate a juvenile taken into custody is filed within twenty-four (24) hours after a detention hearing or ninety-six (96) hours after a juvenile is taken into custody, whichever is sooner, the juvenile shall be discharged from custody, detention, or shelter care.

History. Acts 1989, No. 273, § 12; 1993, No. 882, § 1; 1994 (2nd Ex. Sess.), No. 55, § 2; 1994 (2nd Ex. Sess.), No. 56, § 2; 1999, No. 1340, § 12; 2001, No. 1582, § 1; 2001, No. 1610, § 2.

9-27-315. Emergency hearings.

(a)(1)(A) Following the issuance of an emergency order, the court shall within five (5) business days of the issuance of the ex parte order hold a hearing to determine if probable cause to issue the emergency order continues to exist.

(B)(i) The hearing shall be limited to the purpose of determining whether probable cause existed to protect the juvenile and to determine whether probable cause still exists to protect the juvenile.

(ii) Provided, however, that issues as to custody and delivery of services may be considered by the court and appropriate orders for same entered by the court.

(2)(A) All other issues, with the exception of custody and services, shall be reserved for hearing by the court at the adjudication hearing, which shall be a separate hearing conducted subsequent to the probable cause hearing.

(B) By agreement of the parties, and with the court's approval, the adjudication hearing may be conducted at any time after the probable cause hearing, subject to the provisions of subdivision (d)(2) of this section.

(b) The petitioner shall have the burden of proof by a preponderance of evidence that probable cause exists for continuation of the emergency order.

(c) If the court determines that the juvenile can safely be returned to his or her home pending adjudication and it is in the best interest of the juvenile, the court shall so order.

(d)(1) At the emergency hearing the court shall set the time and date for the adjudication hearing.

(2) The adjudication hearing shall be held within thirty (30) days of the emergency hearing, but may be continued for no more than twenty (20) days following the first thirty (30) days on motion of any party for good cause shown.

(3) A written order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(e) All emergency hearings are miscellaneous hearings as defined in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules of evidence, including, but not limited to, hearsay, are not applicable.

History. Acts 1989, No. 273, § 14; 1993, No. 1227, § 3; 1995, No. 533, § 5; 1995, No. 1337, § 2; 1997, No. 1227, § 3; 1999, No. 1340, § 33.

9-27-316. Right to counsel.

(a)(1) In delinquency and families in need of services cases, a juvenile and his parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's first appearance before the court that the juvenile has the right to be represented at all stages of the proceedings by counsel.

(2) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b)(1)(A) The inquiry concerning the ability of the juvenile to retain counsel shall include a consideration of the juvenile's financial resources and the financial resources of his or her family.

(B) However, the failure of the juvenile's family to retain counsel for the juvenile shall not deprive the juvenile of the right to appointed counsel if required under this section.

(2) After review by the court of an affidavit of financial means completed and verified by the parent of the juvenile and a determination by the court that the parent or juvenile has the ability to pay, the court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney's fees and expenses for representation of a juvenile.

(3) All moneys collected by the clerk of the court under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "juvenile court representation fund".

(4) The court may direct that money from this fund be used in providing counsel for juveniles under this section in delinquency or family in need of services cases and indigent parents or guardians in dependency-neglect cases as provided by subsection (h) of this section.

(5) Any money remaining in the fund at the end of the fiscal year shall not revert to any other fund but shall carry over into the next fiscal year in the juvenile court representation fund.

(c) If counsel is not retained for the juvenile, or it does not appear that counsel will be retained, counsel shall be appointed to represent the juvenile at all appearances before the court, unless the right to counsel is waived in writing as set forth in § 9-27-317.

(d) In a proceeding in which the judge determines that there is a reasonable likelihood that the proceeding may result in the juvenile's commitment to an institution in which the freedom of the juvenile would be curtailed, and counsel has not been retained for the juvenile, the court shall appoint counsel for the juvenile.

(e) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(f)(1) The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Arkansas Supreme Court to represent the best interests of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier.

(2) The court may appoint an attorney ad litem to represent the best interests of a juvenile involved in any case before the court and shall consider the juvenile's best interests in determining whether to appoint an attorney ad litem.

(3) Each attorney ad litem:

(A) Shall file written motions, responses, or objections at all stages of the proceedings when necessary, to protect the best interests of the juvenile;

(B) Shall attend all hearings and participate in all telephone conferences with the court unless excused by the court; and

(C) Shall present witnesses and exhibits when necessary to protect the juvenile's best interests.

(4) An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, juvenile court

records, and Department of Human Services records, to the extent permitted by federal law.

(5)(A) An attorney ad litem shall represent the best interests of the juvenile.

(B) If the juvenile's wishes differ from the attorney's determination of the juvenile's best interests, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his determination of the juvenile's best interests.

(g)(1) The court may appoint a volunteer court-appointed special advocate from a program which shall meet all state and national court-appointed special advocate standards to advocate for juveniles in whom the court determines such services appropriate in dependency-neglect proceedings.

(2) No court-appointed special advocate shall be assigned a case before:

(A) Completing a training program in compliance with National Court Appointed Special Advocate Association and state standards; and

(B) Being approved by the local court-appointed special advocate program which will include appropriate criminal background and child abuse registry checks.

(3) Each court-appointed special advocate shall:

(A)(i) Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem or through court testimony and court reports.

(ii) The court-appointed special advocate may testify if called as a witness.

(iii) When the court-appointed special advocate prepares a written report for the court, the advocate shall provide all parties with a copy of the written report seven (7) business days prior to the relevant hearing;

(B) Monitor the case to which he or she is assigned to ensure compliance with the court's orders; and

(C) Assist the attorney ad litem in representing the juvenile's best interests.

(4) Upon presentation of an order of appointment, a court-appointed special advocate shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, juvenile court records, and Department of Human Services records to the extent permitted by federal law.

(5) A court-appointed special advocate is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses.

(6) A court-appointed special advocate shall not be liable for damages for personal injury or property damage, pursuant to § 16-6-101 et seq.

(7) Except as provided by this subsection, a court-appointed special advocate shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law.

(h)(1) In all proceedings to remove custody from a parent or guardian or to terminate parental rights, the parent or guardian shall be advised, in the dependency-neglect petition or the ex parte emergency order and the first appearance before the court, of the right to be represented by counsel at all stages of the proceedings and the right to appointed counsel if indigent.

(2) Upon request by a parent or guardian and a determination by the court of indigence, the court shall appoint counsel for the parent or guardian in all proceedings to remove custody or terminate parental rights of a juvenile.

(3)(A) After review by the court of an affidavit of financial means completed and verified by the parent or guardian and a determination by the court of an ability to pay, the court shall order financially able parents or guardians to pay all or a part of reasonable attorney's fees and expenses for court-appointed representation of the parent or guardian.

(B)(i) All moneys collected by the clerk of the court under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "juvenile court representation fund".

(ii) The court may direct that money from this fund be used in providing counsel for indigent parents or guardians at the trial level in dependency-neglect proceedings.

(iii) Upon a determination of indigency and a finding by the court that the "juvenile court representation fund" does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and state funds have been exhausted, the court may order the county to pay these reasonable fees and expenses until the state provides funding for such counsel.

(4)(A) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(B) When the first appearance before the court is an emergency hearing to remove custody pursuant to § 9-27-315, parents shall be notified of the right to appointed counsel if indigent in the emergency ex parte order.

(5) The parent's or guardian's attorney shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, juvenile court records, and Department of Human Services records to which they are entitled under state and federal law.

History. Acts 1989, No. 273, § 15; 1977, No. 1227, § 4; 1999, No. 1192, § 14; 1999, No. 1340, § 13. 2001, No. 987, § 2; No. 1503, § 4.

9-27-317. Waiver of right to counsel - Detention of juvenile - Questioning.

(a) Waiver of the right to counsel at a delinquency or family in need of services hearing shall be accepted only upon a finding by the court from clear and convincing evidence, after questioning the juvenile, that:

(1) The juvenile understands the full implications of the right to counsel;

(2) The juvenile freely, voluntarily, and intelligently wishes to waive the right to counsel; and

(3) The parent, guardian, custodian, or counsel for the juvenile has agreed with the juvenile's decision to waive the right to counsel.

(b) The agreement of the parent, guardian, custodian, or attorney shall be accepted by the court only if the court finds:

(1) That such person has freely, voluntarily, and intelligently made the decision to agree with the juvenile's waiver of the right to counsel;

(2) That such person has no interest adverse to the juvenile; and

(3) That such person has consulted with the juvenile in regard to the juvenile's waiver of the right to counsel.

(c) In determining whether a juvenile's waiver of the right to counsel at any stage of the proceeding was made freely, voluntarily, and intelligently, the court shall consider all the circumstances of the waiver, including:

(1) The juvenile's physical, mental, and emotional maturity;

(2) Whether the juvenile understood the consequences of the waiver;

(3) In cases in which the parent, guardian, or custodian agreed with the juvenile's waiver of the right to counsel, whether the parent, guardian, or custodian understood the consequences of the waiver;

(4) Whether the juvenile and his parent, guardian, or custodian were informed of the alleged delinquent act;

(5) Whether the waiver of the right to counsel was the result of any coercion, force, or inducement;

(6) Whether the juvenile and his parent, guardian, or custodian had been advised of the juvenile's right to remain silent and to the appointment of counsel and had waived such rights.

(d) No waiver of the right to counsel shall be accepted in any case in which the parent, guardian, or custodian has filed a petition against the juvenile, initiated the filing of a petition against the juvenile, or requested the removal of the juvenile from the home.

(e) No waiver of the right to counsel shall be accepted in any case where counsel was appointed due to the likelihood of the juvenile's commitment to an institution under § 9-27-316(d).

(f) No waiver of counsel shall be accepted when a juvenile has been designated an extended juvenile jurisdiction offender.

(g) No wavier of the right to counsel shall be accepted when a juvenile is in the custody of the Department of Human Services, including the Division of Youth Services.

(h)(1) All waivers of the right to counsel, except those made in the presence of the court pursuant to subsection (a) of this section, shall be in writing and signed by the juvenile.

(2)(A) When a custodial parent, guardian, or custodian cannot be located or is located and refuses to go to the place where the juvenile is being held, counsel shall be appointed for the juvenile.

(B) Procedures shall then be the same as if the juvenile had invoked counsel.

(i)(1)(A) Whenever a law enforcement officer has reasonable cause to believe that any juvenile found at or near the scene of a felony is a witness to the offense, he may stop that juvenile.

(B) After having identified himself or herself, the officer must advise the juvenile of the purpose of the stopping and may then demand of him his name, address, and any information the juvenile may have regarding the offense.

(C) Such detention shall in all cases be reasonable and shall not exceed fifteen (15) minutes, unless the juvenile shall refuse to give this information, in which case the juvenile, if detained further, shall immediately be brought before any judicial officer or prosecuting attorney to be examined with reference to his or her name, address, or the information he may have regarding the offense.

(2)(A) A law enforcement officer who takes a juvenile into custody for a delinquent or criminal offense shall advise the juvenile of his or her Miranda rights in the juvenile's own language.

(B) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense until the law enforcement officer has advised the juvenile of his or her rights pursuant to subdivision (i)(2)(C) of this section in the juvenile's own language.

(C) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense if the juvenile has indicated in any manner that he or she:

(i) Does not wish to be questioned;

(ii) Wishes to speak with his or her custodial parent, guardian, or custodian or to have that person present; or

(iii) Wishes to consult counsel before submitting to any questioning.

(D) Any waiver of the right to counsel by a juvenile shall conform to subsection (h) of this section.

History. Acts 1989, No. 273, § 16; 1994 (2nd Ex. Sess.), No. 67, § 1; 1994 (2nd Ex. Sess.), No. 68, § 1; 1999, No. 1192, § 15; 2001, No. 1610, § 3.

9-27-318. Waiver and transfer to circuit court.

(a) The juvenile division of circuit court has exclusive jurisdiction when a delinquency case involves a juvenile:

(1) Fifteen (15) years of age or younger when the alleged delinquent act occurred, except as provided by subdivision (c)(2) of this section; or

(2) Less than eighteen (18) years old when he or she engages in conduct that, if committed by an adult, would be any misdemeanor.

(b) The state may file a motion in juvenile court to transfer a case to circuit court or designate a case as an extended juvenile jurisdiction offender case when a case involves a juvenile:

(1) Fourteen (14) or fifteen (15) years old when he engages in conduct that, if committed by an adult, would be:

(A) Murder in the second degree, § 5-10-103;

(B) Battery in the second degree in violation of § 5-13-202(a)(2), (3), or (4);

(C) Possession of a handgun on school property, § 5-73-119(a)(2)(A);

(D) Aggravated assault, § 5-13-204;

(E) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(F) Any felony committed while armed with a firearm;

(G) Soliciting a minor to join a criminal street gang, § 5-74-203;

(H) Criminal use of prohibited weapons, § 5-73-104;

(I) First degree escape, § 5-54-110;

(J) Second degree escape, § 5-54-111; or

(K) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Murder in the second degree, § 5-10-103;

(iv) Kidnapping, § 5-11-102;

(v) Aggravated robbery, § 5-12-103;

(vi) Rape, § 5-14-103;

(vii) Battery in the first degree, § 5-13-201;

(viii) First degree escape, § 5-54-110; and

(ix) Second degree escape, § 5-54-111;

(2) At least fourteen (14) years old when he or she engages in conduct that constitutes a felony under § 5-73-119(a)(1)(A); or

(3) At least fourteen (14) years old when he or she engages in conduct that, if committed by an adult, constitutes a felony and who has, within the preceding two (2) years, three (3) times been adjudicated as a delinquent juvenile for acts that would have constituted felonies if they had been committed by an adult.

(c) The criminal division of circuit court and the juvenile division of circuit court have concurrent jurisdiction, and a prosecuting attorney may charge a juvenile in either division when a case involves a juvenile:

(1) At least sixteen (16) years old when he or she engages in conduct that, if committed by an adult, would be any felony; or

(2) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that, if committed by an adult would be:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Kidnapping, § 5-11-102;

(D) Aggravated robbery, § 5-12-103;

(E) Rape, § 5-14-103;

(F) Battery in the first degree, § 5-13-201;

(G) Terroristic act § 5-13-310.

(d) If a prosecuting attorney can file charges in the criminal division of circuit court for an act allegedly committed by a juvenile, the state may file any other criminal charges that arise out of the same act or course of conduct in the same circuit court case if, after a hearing before the juvenile division of circuit court, a transfer is so ordered.

(e) Upon the motion of the court or of any party, the judge of the division of circuit court in which a delinquency petition or criminal charges have been filed shall conduct a hearing to determine whether to retain jurisdiction or to transfer the case to another court having jurisdiction.

(f) The juvenile court or the criminal division of circuit court shall conduct a transfer hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days from the date of the motion to transfer jurisdiction to the juvenile division or the criminal division of the circuit court.

(g) In making the decision to retain jurisdiction or to transfer the case, the judge of the division of circuit court shall make written findings and consider all of the following factors:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender or in the criminal division of circuit court;

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;

(5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

(7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court which are likely to rehabilitate the juvenile prior to the expiration of the juvenile division of circuit court's jurisdiction;

(8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

(9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(10) Any other factors deemed relevant by the judge.

(h) Upon a finding by clear and convincing evidence that a juvenile should be tried as an adult, the court shall enter an order to that effect.

(i) Upon a finding by the circuit court that a juvenile age fourteen (14) or fifteen (15) and charged with the crimes in subdivision (c)(2) of this section should be transferred to the juvenile division of circuit court, the circuit court shall enter an order to transfer as an extended juvenile jurisdiction case.

(j) If a juvenile age fourteen (14) or fifteen (15) is found guilty in the criminal division of circuit court for an offense other than an offense listed in subsection (b) or subdivision (c)(2) of this section, the judge shall transfer the case to the juvenile division of circuit court for the judge of the juvenile division of circuit court to enter a juvenile disposition.

(k) If the case is transferred to another court, any bail or appearance bond given for the appearance of the juvenile shall continue in effect in the court to which the case is transferred.

(l) Any party may appeal from an order granting or denying the transfer of a case from one division of circuit court to another division of circuit court having jurisdiction over the matter.

(m) The juvenile division of circuit court may conduct a transfer hearing and an extended juvenile jurisdiction hearing at the same time.

History. Acts 1989, No. 273, § 17; 1991, No. 903, § 1; 1993, No. 1189, § 5; 1994 (2nd Ex. Sess.), No. 39, § 1; 1994 (2nd Ex. Sess.), No. 40, § 1; 1995, No. 797, § 1; 1997, No. 1229, § 7; 1997, No. 1299, § 7; 1999, No. 1192, § 16; 2001, No. 1582, § 2.

9-27-319. Double jeopardy.

(a) No juvenile who has been subjected to an adjudication pursuant to a petition alleging him to be delinquent shall be tried later under criminal charges based upon facts alleged in the petition to find him delinquent.

(b) No juvenile who has been tried for a violation of the criminal laws of this state shall be later subjected to a delinquency proceeding arising out of the facts which formed the basis of the criminal charges.

History. Acts 1989, No. 273, 18.

9-27-320. Fingerprinting or photographing.

(a)(1) When a juvenile is arrested for any offense which, if committed by an adult, would constitute a felony, or a Class A misdemeanor wherein violence or the use of a weapon was involved, the juvenile shall be photographed and fingerprinted by the law enforcement agency.

(2) In the case of an allegation of delinquency, a juvenile shall not be photographed or fingerprinted under this subchapter by any law enforcement agency unless he or she has been taken into custody for the commission of an offense which, if committed by an adult, would constitute a felony or a Class A misdemeanor wherein violence or the use of a weapon was involved.

(b)(1) Copies of a juvenile's fingerprints and photograph shall be made available only to other law enforcement agencies, the Arkansas Crime Information Center, prosecuting attorneys, and the juvenile court.

(2) Photographs and fingerprints of juveniles adjudicated delinquent for offenses for which they could have been tried as adults shall be made available to prosecuting attorneys and circuit courts for use at sentencing in subsequent adult criminal proceedings against those same individuals.

(3)(A) When a juvenile departs without authorization from a youth services center or other facility operated by the Division of Youth Services for the care of delinquent juveniles, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the Director of the Youth Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(B) When a juvenile departs without authorization from the State Hospital, if at the time of departure the juvenile is committed as a result of an acquittal on the grounds of mental disease or defect for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Mental Health Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(C) When a juvenile departs without authorization from a local juvenile detention facility, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the director of the juvenile detention facility shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(c) Each law enforcement agency in the state shall keep a separate file of photographs and fingerprints, it being the intention that such photographs and fingerprints of juveniles not be kept in the same file with those of adults.

(d) However, in any case where the juvenile is found not to have committed the alleged delinquent act, the juvenile court may order any law enforcement agency to return all pictures and fingerprints to the juvenile court and shall order the law enforcement agency that took the juvenile into custody to mark the arrest record with the notation "found not to have committed the alleged offense".

History. Acts 1989, No. 273, § 19; 1993, No. 535, § 4; 1993, No. 551, § 4; 1994 (2nd Ex. Sess.), No. 69, § 3; 1994 (2nd Ex. Sess.), No. 70, § 3; 1997, No. 332, § 1; 2001, No. 177, § 1; No. 1712, § 1.

9-27-321. Statements not admissible.

Statements made by a juvenile to the intake officer or probation officer during the intake process prior to a hearing on the merits of the petition filed against the juvenile shall not be used or be admissible against the juvenile at any stage of any proceedings in juvenile court or in any other court.

History. Acts 1989, No. 273, 20.

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History. Acts 1989, No. 273, 20.

9-27-325. Hearings - Generally.

(a)(1)(A) All hearings shall be conducted by the judge without a jury, except as provided by the Extended Juvenile Jurisdiction Act, § 9-27-501 et seq.

(B) If a juvenile is designated an extended juvenile jurisdiction offender, the juvenile shall have a right to a jury trial at the adjudication.

(2) The juvenile shall be advised of the right to a jury trial by the court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(3) The right to a jury trial may be waived by a juvenile only after being advised of his rights and after consultation with the juvenile's attorney.

(4) The waiver shall be in writing and signed by the juvenile and the juvenile's attorney.

(b)(1) The juvenile need not file a written responsive pleading in order to be heard by the court.

(2) In dependency-neglect proceedings, retained counsel shall file a notice of appearance immediately upon acceptance of representation, with a copy to be served on the petitioner.

(c)(1) At the time set for hearing, the court may:

(A) Proceed to hear the case only if the juvenile is

present or excused for good cause by the court; or

(B) Continue the case upon determination that the presence of an adult defendant is necessary.

(2) Upon determining that a necessary party is not present before the court, the court may:

(A) Issue an order for contempt if the juvenile was served with an order to appear; or

(B) Issue an order to appear, with a time and place set by the court for hearing, if the juvenile was served with a notice of hearing.

(d)(1) The court shall be a court of record.

(2) A record of all proceedings shall be kept in the same manner as other proceedings of chancery court and in accordance with rules promulgated by the Arkansas Supreme Court.

(e) Unless otherwise indicated, the Arkansas Rules of Evidence shall apply.

(f) Except as otherwise provided in this subchapter and until rules of procedure for juvenile court are developed and in effect, the Arkansas Rules of Civil Procedure shall apply to all proceedings and the Arkansas Rules of Criminal Procedure shall apply to delinquency proceedings.

(g) All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Criminal Procedure.

(h)(1) The petitioner in all proceedings shall bear the burden of presenting the case at hearings.

(2) The following burdens of proof shall apply:

(A) Proof beyond a reasonable doubt in delinquency hearings;

(B) Proof by a preponderance of the evidence in dependency-neglect, family in need of services, and probation revocation hearings;

(C) Proof by clear and convincing evidence for hearings to terminate parental rights and transfer hearings and in hearings to determine whether or not reunification services shall be provided.

(i)(1) All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed.

(2) All other hearings may be closed within the discretion of the court, except that in delinquency cases the juvenile shall have the right to an open hearing and in adoption cases the hearings shall be closed as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.

(j) Except as provided in § 9-27-502, in any juvenile delinquency proceeding where the juvenile's fitness to proceed is put in issue by any party or the court, the provisions of § 5-2-301 et seq. shall apply.

(k) In delinquency proceedings, juveniles are entitled to all defenses available to defendants in circuit court.

(l)(1) The Department of Human Services shall provide to foster parents and preadoptive parents of a child in department custody notice of any review or hearing to be held with respect to the child.

(2) Relative caregivers shall be provided notice by the original petitioner in the juvenile matter.

(3)(A) The court shall allow foster parents, preadoptive parents, and relative caregivers an opportunity to be heard in any review or hearing held with respect to a child in their care.

(B) Foster parents, adoptive parents, and relative caregivers shall not be made parties to the review or hearing solely on the basis that the persons are entitled to notice and the opportunity to be heard.

(m)(1)(A) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or younger when:

(i) The grandchild resides with this grandparent for at least six (6) continuous months prior to his or her first birthday;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated; and

(iv) Notice to a grandparent under subdivision (m)(1)(A) of this section shall be given by the Department of Human Services; and

(B) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or older when:

(i) The grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(2) For purposes of this subsection, "grandparent" does not mean a parent of a putative father of a child.

History. Acts 1989, No. 273, § 24; 1993, No. 758, § 5; 1995, No. 533, § 6; 1997, No. 1118, § 2; 1999, No. 401, § 5; 1999, No. 1192, § 17; 2001, No. 987, § 3; 2001, No. 1497, § 2; 2001, No. 1503, § 5.

9-27-326. Detention hearing.

(a) If a juvenile is taken into custody on an allegation of delinquency, violation of probation, or violation of a court order and not released by the law enforcement officer or intake officer, a detention hearing shall be held as soon as possible but no later than seventy-two (72) hours after the juvenile was taken into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day. Otherwise, the juvenile shall be released.

(b) Prior written notice of the time, place, and purpose of the detention hearing shall be given to:

(1) The juvenile;

(2) The juvenile's attorney; and

(3) The juvenile's parent, guardian, or custodian. However, if the court finds after a reasonable diligent effort, the petitioner was unable to notify the parent, guardian, or custodian, the hearing may proceed without notice to that party.

(c) The petitioner shall have the burden of proof by clear and convincing evidence that the restraint on the juvenile's liberty is necessary and that no less restrictive alternative will reduce the risk of flight, or of serious harm to property, or to the physical safety of the juvenile or others.

(d) During the detention hearing, the court shall:

(1) Inform the juvenile:

(A) Of the reasons continued detention is being sought;

(B) That he is not required to say anything, and that anything he says may be used against him;

(C) That he has a right to counsel; and

(D) That, before the hearing proceeds further, he has the right to communicate with his attorney, parent, guardian, or custodian, and that reasonable means will be provided for him to do so.

(2) Admit testimony and evidence relevant only to determination that probable cause exists that the juvenile committed the offense as alleged and that detention of the juvenile is necessary.

(3) Assess the following factors in determining whether to release the juvenile prior to further hearings in the case:

(A) Place and length of residence;

(B) Family relationships;

(C) References;

(D) School attendance;

(E) Past and present employment;

(F) Juvenile and criminal records;

(G) The juvenile's character and reputation;

(H) Nature of the charge being brought and any mitigating or aggravating circumstances;

(I) Whether detention is necessary to prevent imminent bodily harm to the juvenile or to another;

(J) The possibility of additional violations occurring if the juvenile is released;

(K) Factors which indicate the juvenile is likely to appear as required;

(L) Whether conditions should be imposed on the juvenile's release.

(e)(1) The court shall release the juvenile when there is a finding that no probable cause exists that the juvenile committed the offense as alleged.

(2) The court, upon a finding that detention is not necessary, may release the juvenile:

(A) Upon his personal recognizance;

(B) Upon an order to appear;

(C) To his parent, guardian, or custodian upon written promise to bring the juvenile before the court when required;

(D)(i) To the care of a qualified person or agency agreeing to supervise the juvenile and assist him in appearing in court.

(ii) Provided, that for purposes of this subdivision (e)(2)(D), "qualified agency" does not include the Department of Human Services or any of its divisions;

(E)(i) Under the supervision of the probation officer or other appropriate public official.

(ii) Provided, however, for purposes of this subdivision (e)(2)(E), "appropriate public official" does not include the Department of Human Services;

(F) Upon reasonable restrictions on activities, movements, associations, and residences of the juvenile;

(G) On bond to his parent, guardian, or custodian; or

(H) Under such other reasonable restrictions to ensure the appearance of the juvenile.

(3) If the court determines that only a money bond will ensure the appearance of the juvenile, the court may require:

(A) An unsecured bond in an amount set by the judicial officer;

(B) A bond accompanied by a deposit of cash or securities equal to ten percent (10%) of the face amount set by the court which shall be returned at the conclusion of the proceedings if the juvenile has not defaulted in the performance of the conditions of the bond;

(C) A bond secured by deposit of the full amount in cash, or by other property, or by obligation of qualified securities.

(4) Orders of conditional release may be modified upon notice, hearing, and good cause shown.

(5) If the court releases a juvenile under subdivision (e)(2)(D) of this section, the court may, if necessary for the best interest of the juvenile, request that the Department of Human Services immediately initiate an investigation as to whether the juvenile is in imminent danger or a situation exists whereby the juvenile is dependent-neglected.

History. Acts 1989, No. 273, § 25; 1995, No. 533, § 7; 2001, No. 987, § 4.

9-27-327. Adjudication hearing.

(a)(1) An adjudication hearing shall be held to determine whether the allegations in a petition are substantiated by the proof.

(2)(A)(i) In dependency-neglect cases, if the Department of Human Services, the attorney ad litem, or the court recommends that reunification services should not be provided to reunite a child with his or her family, the department, attorney ad litem, or court shall provide written notice to the defendants.

(ii) The notice shall be provided to the parties at least fourteen (14) calendar days before the hearing.

(iii) The notice shall identify in sufficient detail to put the family on notice the grounds for recommending "no reunification services".

(B)(i) The court shall determine whether or not reunification services shall be provided.

(ii) The burden of presenting the case shall be on the requesting party.

(C) The "no reunification services" request shall be heard immediately after the adjudication hearing or in a separate disposition hearing.

(D) The department, the attorney ad litem, or the court can make a "no reunification services" recommendation and provide notice to the parties of the recommendation at any time.

(E)(i) The court shall conduct and complete a hearing on a "no reunification services" within fifty (50) days of the date of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided.

(ii) If the court determines that reunification services shall not be provided, the court shall hold a permanency planning hearing within thirty (30) days after the determination.

(b) If a juvenile is in detention, an adjudication hearing shall be held, unless the juvenile or a party is seeking an extended juvenile jurisdiction designation, not later than fourteen

(14) days from the date of the detention hearing unless waived by the juvenile or good cause is shown for a continuance.

(c) In extended juvenile jurisdiction offender proceedings, the adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(d) Following an adjudication in which a juvenile is found to be delinquent, dependent-neglected, or a member of a family in need of services, the court may order any studies or predisposition reports, if needed, that bear on disposition.

(e)(1) All such reports shall be provided in writing to all parties and counsel at least two (2) days prior to the disposition hearing.

(2) All parties shall be given a fair opportunity to controvert any parts of such reports.

(f) In dependency-neglect cases, a written adjudication order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

History. Acts 1989, No. 273, § 26; 1997, No. 1227, § 5; 1999, No. 401, § 6; 1999, No. 1192, § 18; 2001, No. 1503, § 6.

9-27-330. Disposition - Delinquency - Alternatives.

(a) If a juvenile is found to be delinquent, the court may enter an order making any of the following dispositions based upon the best interest of the juvenile:

(1)(A) Transfer legal custody of the juvenile to any licensed agency responsible for the care of delinquent juveniles or to a relative or other individual;

(B)(i) Commit the juvenile to a youth services center using the risk assessment system for Arkansas juvenile offenders distributed and administered by the Administrative Office of the Courts.

(ii) The risk assessment may be modified by the Juvenile Committee of the Arkansas Judicial Council with the Division of Youth Services.

(iii) In an order of commitment, the court may recommend that a juvenile be placed in a community-based program instead of a youth services center and shall make specific findings in support of such a placement in the order.

(iv) Upon receipt of an order of commitment with recommendations for placement, the Division of Youth Services of the Department of Human Services shall consider the recommendations of the committing court in placing a youth in a youth services facility or a community-based program.

(C) In all cases in which both commitment and transfer of legal custody are ordered by the court in the same order, transfer of custody will be entered only upon compliance with the provisions of §§ 9-27-310 - 9-27-312, 9-27-316, 9-27-327, and 9-27-328;

(2) Order the juvenile or members of the juvenile's family to submit to physical, psychiatric, or psychological evaluations;

(3) Grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court and that no further services or periodic reviews are required;

(4)(A) Place the juvenile on probation under those conditions and limitations that the court may prescribe pursuant to § 9-27-339(a).

(B)(i) In addition, the court shall have the right, as a term of probation, to require the juvenile to attend school or make satisfactory progress toward a general educational development certificate.

(ii) The court shall have the right to revoke probation if the juvenile fails to regularly attend school or if satisfactory progress toward a general educational development certificate is not being made;

(5) Order a probation fee, not to exceed twenty dollars ($20.00) per month, as provided in § 16-13-326(a);

(6) Assess a court cost of no more than thirty-five dollars ($35.00) to be paid by the juvenile, his parent, both parents, or his guardian;

(7)(A) Order restitution to be paid by the juvenile, a parent, both parents, the guardian, or his custodian.

(B) If the custodian is the State of Arkansas, both liability and the amount which may be assessed shall be determined by the Arkansas State Claims Commission;

(8) Order a fine of not more than five hundred dollars ($500) to be paid by the juvenile, a parent, both parents, or the guardian;

(9) Order that the juvenile and his parent, both parents, or the guardian perform court-approved volunteer service in the community, designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile, not to exceed one hundred sixty (160) hours;

(10)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-approved parental responsibility training program, if available.

(B) The court may make reasonable orders requiring proof of completion of such training program within a certain time period and payment of a fee covering the cost of the training program.

(C) The court may provide that any violation of such orders shall subject the parent, both parents, or the guardian to the contempt sanctions of the court;

(11)(A)(i) Order that the juvenile remain in a juvenile detention facility for an indeterminate period not to exceed ninety (90) days.

(ii) The court may further order that the juvenile be eligible for work release or to attend school or other educational or vocational training.

(B) The juvenile detention facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents;

(12) Place the juvenile on residential detention with electronic monitoring, either in the juvenile's home or in another facility as ordered by the court;

(13)(A) Order the parent, both parents, or the guardian of any juvenile adjudicated delinquent and committed to a youth services center or detained in a juvenile detention facility to be liable for the cost of the commitment or detention.

(B)(i) The court shall take into account the financial ability of the parent, both parents, or the guardian to pay for such commitment, detention, or foster care.

(ii) The court shall take into account the past efforts of

the parent, both parents, or the guardian to correct the delinquent juvenile's conduct.

(iii) The court shall take into account, if the parent is a noncustodial parent, the opportunity the parent has had to correct the delinquent juvenile's conduct.

(iv) The court shall take into account any other factors the court deems relevant; or

(14)(A) Order the Department of Finance and Administration to suspend the driving privileges of any juvenile adjudicated delinquent.

(B) The order shall be prepared and transmitted to the department within twenty-four (24) hours after the juvenile has been found delinquent and is sentenced to have his driving privileges suspended.

(C) The court may provide in the order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school or for other circumstances.

(b) The juvenile court shall specifically retain jurisdiction to amend or modify any orders entered pursuant to subdivisions (a)(4)-(12) of this section.

(c)(1) If a juvenile is adjudicated delinquent for possession of a handgun, as provided in § 5-73-119, or criminal use of prohibited weapons, as provided in § 5-73-104, or possession of a defaced firearm, as provided in § 5-73-107, the court shall commit the juvenile:

(A) To a juvenile detention facility, as provided in subdivision (a) (11) of this section; or

(B) To a youth services center operated by the Department of Human Services State Institutional System Board, as provided in subdivision (a)(1) of this section; or

(C) Place the juvenile on residential detention, as provided in subdivision (a)(12) of this section.

(2) The court may take into consideration any preadjudication detention period served by the juvenile and sentence the juvenile to such time served.

(d)(1) When the court orders restitution pursuant to subdivision (a) (7) of this section, the court shall consider the following:

(A) The amount of restitution may be decided:

(i) If the juvenile is to be responsible for the restitution, by agreement between the juvenile and the victim; or

(ii) If the parent or parents are to be responsible for the restitution, by agreement between the parent or parents and the victim; or

(iii) If the juvenile and the parent or parents are to be responsible for the restitution, by agreement between the juvenile, his parent or parents, and the victim; or

(iv) At a hearing at which the state must prove the restitution amount by a preponderance of the evidence;

(B) Restitution shall be made immediately, unless the court determines that the parties should be given a specified time to pay or should be allowed to pay in specified installments;

(C)(i) In determining if restitution should be paid and by whom, as well as the method and amount of payment, the court shall take into account:

(a) The financial resources of the juvenile, his parent, both parents, or the guardian, and the burden such payment will impose with regard to the other obligations of the paying party;

(b) The ability to pay restitution on an installment basis or on other conditions to be fixed by the court;

(c) The rehabilitative effect of the payment of restitution and the method of payment; and

(d) The past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct;

(ii)(a) The court shall take into account if the parent is a noncustodial parent.

(b) The court may take into consideration the opportunity the

parent has had to correct the delinquent juvenile's conduct; and

(iii) The court shall take into account any other factors the court deems relevant.

(2) If the juvenile is placed on probation, any restitution ordered under this section may be a condition of the probation.

(e) When an order of restitution is entered, it may be collected by any means authorized for the enforcement of money judgments in civil actions, and it shall constitute a lien on the real and personal property of the persons and entities the order of restitution is directed upon in the same manner and to the same extent as a money judgment in a civil action.

(f)(1) The judgment entered by the court may be in favor of the state, the victim, or any other appropriate beneficiary.

(2) The judgment may be discharged by a settlement between the parties ordered to pay restitution and the beneficiaries of the judgment.

(g) The court shall determine priority among multiple beneficiaries on the basis of the seriousness of the harm each suffered, their other resources, and other equitable factors.

(h) If more than one (1) juvenile is adjudicated delinquent of an offense for which there is a judgment under this section, the juveniles are jointly and severally liable for the judgment unless the court determines otherwise.

(i)(1) A judgment under this section does not bar a remedy available in a civil action under other law.

(2) A payment under this section must be credited against a money judgment obtained by the beneficiary of the payment in a civil action.

(3) A determination under this section and the fact that payment was or was not ordered or made are not admissible in evidence in a civil action and do not affect the merits of the civil action.

(j) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter the following dispositions:

(1) Order any of the juvenile delinquency dispositions authorized by § 9-27-330; and

(2) Suspend the imposition of an adult sentence pending juvenile court review.

History. Acts 1989, No. 273, § 29; 1991, No. 763, § 1; 1993, No. 1227, § 4; 1994 (2nd Ex. Sess.), No. 61, § 1; 1994 (2nd Ex. Sess.), No. 62, § 1; 1995, No. 533, § 9; 1995, No. 779, § 1; 1995, No. 798, § 1; 1995, No. 1261, § 14; 1995, No. 1335, § 1; 1995, No. 1337, § 5; 1997, No. 1118, § 3; 1999, No. 1192, § 19; 1999, No. 1340, §§ 15, 16.

9-27-331. Disposition - Delinquency - Limitations.

(a)(1) A commitment to the Division of Youth Services of the Department of Human Services is for an indeterminate period, not to exceed the eighteenth birthday of a juvenile, except as otherwise provided by law.

(2) An order of commitment shall remain in effect for an indeterminate period not exceeding two (2) years from the date entered.

(3) Prior to the expiration of an order of commitment, the court may extend the order for additional periods of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(4) The committing court may recommend, at any time, that a juvenile be released from the custody of the Division of Youth Services by making a written request for release stating the reasons release is deemed in the best interests of the juvenile and society.

(5) Length of stay and final decision to release shall be the exclusive responsibility of the Division of Youth Services, except when the juvenile is an extended juvenile jurisdiction offender.

(b)(1)(A) Subsection (a) of this section does not apply to extended juvenile jurisdiction offenders.

(B) The juvenile court shall have sole release authority when an extended juvenile jurisdiction offender is committed to the Division of Youth Services.

(2)(A) Upon a determination that the juvenile has been rehabilitated, the Division of Youth Services may petition the court for release.

(B) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the Division of Youth Services:

(i) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(ii) The nature of the offense or offenses and the manner

in which they were committed;

(iii) The recommendations of the professionals who have worked with the juvenile;

(iv) The protection of public safety; and

(v) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(3) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

(c)(1) Unless otherwise stated, and excluding extended juvenile jurisdiction offenders, an order of probation shall remain in effect for an indeterminate period not exceeding two (2) years.

(2) A juvenile shall be released from probation upon expiration of the order or upon a finding by the court that the purpose of the order has been achieved.

(3) Prior to the expiration of an order of probation, the court may extend the order for an additional period of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(d)(1)(A) The court may enter an order for physical, psychiatric, or psychological evaluation or counseling or treatment affecting the family of a juvenile only after finding that such evaluation, counseling, or treatment of family members is necessary for the treatment or rehabilitation of the juvenile.

(B) Provided, however, that subdivision (d)(1)(A) of this section shall not be applicable to the parental responsibility training programs in § 9-27-330(a).

(2) For purposes of this section, if the Department of Human Services will be the payor, excluding the community-based providers, the court shall not specify a particular provider for family services.

(e)(1) An order of restitution, not to exceed ten thousand dollars ($ 10,000) per victim, to be paid by the juvenile, his parent, both parents, the guardian, or custodian may be entered only after proof by a preponderance of the evidence that specific damages were caused by the juvenile and that the juvenile's actions were the proximate cause of the damage.

(2)(A) If the amount of restitution determined by the court exceeds ten thousand dollars ($10,000) for any individual victim, the court shall enter a restitution order for ten thousand dollars ($10,000) in favor of the victim.

(B) Nothing in this section is intended to bar or prevent a person or entity from seeking recovery for damages in excess of ten thousand dollars ($10,000) available under other law.

(f) In every case where an order of commitment has been entered pursuant to an adjudication of delinquency, the facility to which the juvenile is committed shall, within thirty (30) days of the juvenile's commitment, prepare a written case plan which shall:

(1) State the treatment plan for the juvenile;

(2) State the anticipated length of commitment of the juvenile;

(3)(A) State recommendations as to the most appropriate post-commitment placement of the juvenile.

(B)(i) If the juvenile cannot return to the custody of his parent, guardian, or custodian because of child maltreatment, the Division of Youth Services shall immediately contact the Office of Chief Counsel of the Department of Human Services.

(ii) The department shall petition the court to determine the issue of custody of the juvenile; and

(4) Specify post-commitment family services, if any, which should be offered by the Department of Human Services.

(g) A copy of the written case treatment plan shall be submitted to the committing court for its review and, in addition, shall be provided to the custodian of the juvenile and filed in any court files of any court in which a dependency-neglect or family in need of services action concerning that juvenile is then pending.

(h) Custody of a juvenile may be transferred to a relative or other individual only after a full investigation of the placement is conducted by the Department of Human Services and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

History. Acts 1989, No. 273, § 30; 1991, No. 763, § 2; 1994 (2nd Ex. Sess.), No. 61, § 2; 1994 (2nd Ex. Sess.), No. 62, § 2; 1995, No. 779, § 2; 1995, No. 1261, § 15; 1999, No. 1192, § 20; 1999, No. 1340, §§ 17-19.

9-27-339. Probation - Revocation.

(a) After an adjudication of delinquency, the court may place a juvenile on probation. The conditions of probation shall be given to the juvenile in writing and explained to him and to his parent, guardian, or custodian by the probation officer in the initial conference following the disposition hearing.

(b) Any violation of a condition of probation may be reported to the prosecuting attorney, who may initiate a petition in the court for revocation of probation. A petition for revocation of probation shall contain specific factual allegations constituting each violation of a condition of probation.

(c) The petition alleging violation of a condition of probation and seeking revocation of probation shall be served upon the juvenile, his attorney, and his parent, guardian, or custodian.

(d) A revocation hearing shall be set within a reasonable time after the filing of the petition, or within fourteen (14) days if the juvenile has been detained as a result of the filing of the petition for revocation.

(e) If the court finds by a preponderance of the evidence that the juvenile violated the terms and conditions of probation, the court may:

(1) Extend probation;

(2) Impose additional conditions of probation;

(3) Make any disposition that could have been made at the time probation was imposed; or

(4)(A) Commit the juvenile to a juvenile detention facility for an indeterminate period not to exceed ninety (90) days.

(B) The court may further order that the juvenile be eligible for work release or to attend school or other educational or vocational training.

(f)(1) Nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his part to make a good faith effort to obtain the funds required for payment.

(2) In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(3) If the court determines that the default in payment of a fine, costs, or restitution is excusable under subdivision (f)(1) of this section, the court may enter an order allowing the juvenile additional time for payment, reducing the amount of each installment, or revoking the fine, costs, or restitution or unpaid portion thereof in whole or in part.

History. Acts 1989, No. 273, § 38; 1994 (2nd Ex. Sess.), No. 69, § 2; 1994 (2nd Ex. Sess.), No. 70, § 2.

9-27-345. Admissibility of evidence.

Juvenile adjudications of delinquency for offenses for which the juvenile could have been tried as an adult may be used at the sentencing phase in subsequent adult criminal proceedings against those same individuals. No other evidence adduced against a juvenile in any proceeding under this subchapter nor the fact of adjudication or disposition shall be admissible evidence against such juvenile in any civil, criminal, or other proceeding. However, such evidence shall be admissible, where proper, in subsequent proceedings against the same juvenile under this subchapter.

History. Acts 1989, No. 273, 44; 1993, No. 535, 5; 1993, No. 551, 5.

9-27-352. Confidentiality of records.

(a) Records of the arrest of a juvenile, the detention of a juvenile, and the proceedings under this subchapter shall be confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unless:

(1) Authorized by a written order of the juvenile division of circuit court; or

(2) The arrest or the proceedings under this subchapter result in the juvenile's being formally charged in the criminal division of circuit court for a felony.

(b) Information regarding the arrest or detention of a juvenile, and related proceedings under this subchapter shall be confidential unless the exchange of information is:

(1) For the purpose of obtaining services for the juvenile or to ensure public safety;

(2) Reasonably necessary to achieve one (1) or both purposes; and

(3) Pursuant to a written order by the juvenile judge.

(c)(1) The information may only be given to the following persons:

(A) A school counselor;

(B) A juvenile court probation officer or caseworker;

(C) A law enforcement officer;

(D) A spiritual representative designated by the juvenile or his parents or legal guardian;

(E) A Department of Human Services caseworker;

(F) A community-based provider designated by the court, the school, or the parent or legal guardian of the juvenile;

(G) A Department of Health representative; or

(H) The juvenile's guardian ad litem or other court-appointed special advocate.

(2) The persons listed in subdivision (c)(1) of this section may assemble to exchange information to discuss options for assistance to the juvenile, to develop and implement a plan of action to assist the juvenile, and to ensure public safety.

(3) The juvenile and his parents or legal guardian shall be notified within a reasonable time before and may attend any meeting of the persons referred to in subdivision (c)(1) of this section when three (3) or more individuals meet to discuss assistance for the juvenile or protection of the public due to the juvenile's behavior.

(4) Medical records, psychiatric records, psychological records, and information related thereto shall remain confidential unless the juvenile's parents or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (c)(1) of this section and the purpose for the disclosure.

(5) Persons listed in subsection subdivision (c)(1) of this section who exchange any information referred to in this section may be held civilly liable for disclosure of the information wherein the person did not comply with limitations set forth in this section.

History. Acts 1993, No. 408, § 1; 1999, No. 954, § 1; 2001, No. 1582, § 3.

9-27-501. Extended juvenile jurisdiction designation.

(a) The state may request an extended juvenile jurisdiction designation in a delinquency petition or file a separate motion if the:

(1) Juvenile, under the age of thirteen (13) at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in § 9-27-502;

(2)(A) Juvenile, age thirteen (13) at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(B) However, juveniles age thirteen (13) at the time of the alleged offense shall have an evaluation pursuant to § 9-27-502 and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity; or

(3) Juvenile, age fourteen (14) or fifteen (15) at the time of the alleged offense, is charged with any of the crimes listed in § 9-27-318(b)(2).

(b) The juvenile's attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to subsection (a) of this section.

History. Acts 1999, No. 1192, § 1.

9-27-502. Competency - Fitness to proceed - Lack of capacity.

(a) Except as provided by subsection (b) of this section, the provisions of § 5-2-301 et seq. shall apply to the following:

(1) In any juvenile delinquency proceeding where the juvenile's fitness to proceed is put in issue by any party or the court; and

(2) In juvenile delinquency proceedings where extended juvenile jurisdiction designation has been requested by any party and a party intends to raise lack of capacity as an affirmative defense.

(b)(1)(A) For a juvenile under the age of thirteen (13) at the time of the alleged offense and who is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, there shall be a presumption that:

(i) Said juvenile is unfit to proceed; and

(ii) He lacked capacity to:

(a) Possess the necessary mental state required for the offense charged;

(b) Conform his conduct to the requirements of law; and

(c) Appreciate the criminality of his conduct.

(B) The prosecution must overcome these presumptions by a preponderance of the evidence.

(2)(A) For such juveniles under the age of thirteen (13) and who are charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, the court shall order an evaluation, to be performed in accordance with § 5-2-305(b), by a psychiatrist or a clinical psychologist who is specifically qualified by training and experience in the evaluation of juveniles.

(B) Upon an order for evaluation, all proceedings shall be suspended, and the period of delay until the juvenile is determined fit to proceed shall constitute an excluded period for the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(3) The court shall require the prosecuting attorney to provide to the examiner any information relevant to the evaluation, including, but not limited to:

(A) The names and addresses of all attorneys involved;

(B) Information about the alleged offense; and

(C) Any information about the juvenile's background that the prosecutor deems relevant.

(4) The court may require the attorney for the juvenile to provide any available information relevant to the evaluation, including, but not limited to:

(A) Psychiatric records;

(B) School records; and

(C) Medical records.

(5) All information required under subdivisions (b)(3) and (4) of this section must be provided to the examiner within ten (10) days after the court order for the evaluation and, when possible, this information shall be received prior to the juvenile's admission to the facility providing the inpatient evaluation.

(6) In assessing the juvenile's competency, the examiner shall:

(A)(i) Obtain and review all records pertaining to the juvenile.

(ii) This should include the information in subdivisions (b)(3) and (4) of this section and any other relevant records;

(B) Consider the social, developmental, and legal history of the juvenile, as related by the juvenile and a parent or guardian, and any other relevant source;

(C) Consider the current alleged offense;

(D) Conduct a competence abilities interview of the juvenile;

(E) Conduct an age-appropriate mental status exam using tests designed for juveniles;

(F) Conduct an age-appropriate psychological evaluation, using tests designed for juveniles; and

(G) Consider any other relevant test or information.

(7)(A) Evaluations shall be filed with the court and distributed to the parties within ninety (90) days from the date of the order requesting such evaluation.

(B) All such reports shall be filed under seal with the court and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(C) The report shall include, but not be limited to, the following:

(i) Identification of the juvenile and the charges;

(ii) Listing of assessment methods used;

(iii) Description of what the juvenile was told about the purpose of the evaluation;

(iv) Social, clinical, and developmental history and the sources from which this information was obtained;

(v) Mental status data, including any psychological testing conducted and results;

(vi) Comprehensive intelligence testing;

(vii) Competence data assessing the competence-to-stand-trial abilities;

(viii) Interpretation of the data, including clinical or developmental explanations for any serious deficits in competence abilities;

(ix)(a) An opinion as to the juvenile's fitness to proceed.

(b) In reaching this opinion, the examiner shall consider and make written findings regarding the following:

(1) Do the juvenile's capabilities entail:

(A) An ability to understand and appreciate the charges and their seriousness;

(B) An ability to understand and realistically appraise the likely outcomes;

(C) A reliable episodic memory so that he can accurately and reliably relate a sequence of events;

(D) An ability to extend thinking into the future;

(E) An ability to consider the impact of his actions on others;

(F) Verbal articulation abilities or the ability to express himself in a reasonable and coherent manner; and

(G) Logical decision-making abilities, particularly multifactored problem solving or the ability to take several factors into consideration in making a decision.

(2) Developmentally, does he have:

(A) An ability to understand the charges;

(B) An ability to understand the roles of participants in the trial process, i.e., judge, defense attorney, prosecutor, witnesses, and jury and understand the adversarial nature of the process;

(C) An ability to adequately trust and work collaboratively with his attorney and provide a reliable recounting of events;

(D) An ability to reason about available options by weighing their consequences, including, but not limited to, weighing pleas, waivers, and strategies;

(E) An ability to disclose to an attorney a reasonably coherent description of facts pertaining to the charges, as perceived by the juvenile; and

(F) An ability to articulate his motives; and

(x)(a) An opinion as to whether at the time the juvenile engaged in the conduct charged, as a result of immaturity or mental disease or defect, the juvenile lacked capacity to:

(1) Possess the necessary mental state required for the offense charged;

(2) Conform his conduct to the requirements of the law; and

(3) Appreciate the criminality of his conduct.

(b) In reaching this opinion, the examiner shall consider and make written findings with respect to the following questions regarding the juvenile's abilities and capacities:

(1) Was he able to form the necessary intent;

(2) Did he know which actions were wrong;

(3) Did he have reasonably accurate expectations of the consequences of his actions;

(4) Was he able to act of his own volition;

(5) Did he have the capacity to behave intentionally;

(6) Did he have the capacity to engage in logical decision-making;

(7) Did he have the capacity to foresee the consequences of his actions; and

(8) Did he have the capacity to exert control over his impulses and to resist peer pressure.

(8)(A) Within thirty (30) days of the receipt of the evaluation report, the court shall first determine whether the juvenile is fit to proceed.

(B)(i) The parties may stipulate to the findings and conclusions of the evaluation report and the court may enter

an order with respect to fitness based thereon.

(ii)(a) Otherwise, a hearing shall be conducted and in order for the court to find a juvenile fit to proceed, the prosecution shall be required to prove by a preponderance of the evidence the following:

(1) The juvenile understands the charges and potential consequences;

(2) The juvenile understands the trial process and proceedings against him; and

(3) The juvenile has the capacity to effectively participate with and assist his attorney in a defense to prosecution.

(b) The court shall issue written findings as to whether the prosecution has met its burden with respect to such issues and whether the juvenile is fit or unfit to proceed.

(9)(A) If the juvenile is found unfit to proceed, the court shall commit the juvenile to the Arkansas State Hospital or a residential treatment facility for a period not to exceed nine (9) months.

(B) During this period, the facility responsible for the juvenile shall be required to report to the court and the parties at least every thirty (30) days on the juvenile's progress.

(C) If fitness to proceed is not restored within nine (9) months, the court shall convert the delinquency petition to a family in need of services petition.

(10)(A) If a juvenile is found fit to proceed, the court shall next conduct a hearing wherein the state shall be required to prove by a preponderance of the evidence that at the time the juvenile engaged in the conduct charged he had the capacity to:

(i) Possess the necessary mental state required for the offense charged;

(ii) Conform his conduct to the requirements of the law; and

(iii) Appreciate the criminality of his conduct.

(B)(i) In making such determination, the court shall consider the written findings of the examiner and any other relevant evidence and shall issue a written order with respect to such hearing.

(ii) If the court finds that the state did not meet its burden with regard to the capacity of the charged offense, but the juvenile had the capacity for a lesser included offense, the court shall convert the extended juvenile jurisdiction petition to a delinquency petition.

(iii) If the court finds the state did not meet its burden with regard to the capacity of the charged offense or a lesser included offense, the court shall convert the delinquency petition into a family in need of services petition.

(iv)(a) If the court finds that the state met its burden with regard to the capacity, the court shall schedule a designation hearing as described in § 9-27-503.

(b) Such a finding by the court does not prevent the juvenile from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing.

History. Acts 1999, No. 1192, § 2.

9-27-503. Designation hearing.

(a)(1) When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing within thirty (30) days, if the juvenile is detained, and no longer than ninety (90) days following the petition or motion requesting such designation.

(2) These time limitations shall be tolled during the pendency of any competency issues.

(b) The party requesting the extended juvenile jurisdiction designation has the burden to prove by a preponderance of the evidence that such designation is warranted.

(c) The court shall make written findings and consider all of the following factors in making its determination to designate a juvenile as an extended juvenile jurisdiction offender:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender;

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;

(5) The previous history of the juvenile, including whether the juvenile had been adjudicated delinquent and, if so, whether the offenses were against persons or property and any other previous history of antisocial behavior or patterns of physical violence;

(6) The sophistication and maturity of the juvenile, as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

(7) Whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;

(8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

(9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(10) Any other factors deemed relevant by the court.

(d) Upon finding that the juvenile shall be treated as an extended juvenile jurisdiction offender, the court shall enter its written findings and inform the juvenile of his right to a jury trial and shall set a date for the adjudication.

(e) If the court denies the request for extended juvenile jurisdiction, the court shall enter its written findings and proceed with the case as a delinquency proceeding.

(f) For purposes of appeal, a designation order is a final appealable order and shall be subject to an interlocutory appeal.

History. Acts 1999, No. 1192, § 3.

9-27-504. Right to counsel.

(a) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b) This right to counsel cannot be waived.

History. Acts 1999, No. 1192, § 4.

9-27-505. Extended juvenile jurisdiction adjudication.

(a) An extended juvenile jurisdiction offender and the state shall have the right to a jury trial at the adjudication hearing.

(b) The juvenile shall be advised of the right to a jury trial by the court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(c)(1) The right to a jury trial may be waived by a juvenile only after being advised of his rights and after consultation with the juvenile's attorney.

(2) The waiver shall be in writing and signed by the juvenile, the juvenile's attorney, and the juvenile's parent or guardian and the court shall inquire on the record to ensure that the waiver was made in a knowing, intelligent, and voluntary manner.

(d) All provisions of the Arkansas Code of 1987 Annotated and the Arkansas Rules of Criminal Procedure, not in conflict with this subchapter, that regulate criminal jury trials in circuit court shall apply to jury trials for juveniles subject to extended juvenile jurisdiction proceedings.

(e) The adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(f) The state bears the burden to prove the charges in the petition beyond a reasonable doubt.

(g)(1) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the juvenile court shall enter a disposition subject to § 9-27-506.

(2) If the juvenile is adjudicated delinquent for an offense that would not have subjected him to extended juvenile jurisdiction, the court shall enter any of the dispositions available at § 9-27-330.

History. Acts 1999, No. 1192, § 5.

9-27-506. Extended juvenile jurisdiction disposition hearing.

If a juvenile is found delinquent as an extended juvenile jurisdiction offender, the court shall enter the following dispositions:

(1) Order any of the juvenile dispositions authorized by § 9-27-330; and

(2) Suspend the imposition of adult sentence pending juvenile court review.

History. Acts 1999, No. 1192, § 6.

9-27-507. Extended juvenile jurisdiction court review hearing.

(a) The state may petition the juvenile court at any time to impose an adult sentence if the juvenile:

(1) Has violated a juvenile disposition order;

(2) Has been adjudicated delinquent or found guilty of committing a new offense; or

(3) Is not amenable to rehabilitation in the juvenile system.

(b) If the court finds by a preponderance of the evidence that the juvenile has violated a juvenile disposition order, has been found delinquent or guilty of committing a new offense, or is not amenable to rehabilitation in the juvenile system, the court may:

(1) Amend or add any juvenile disposition authorized by § 9-27-330; or

(2)(A)(i) Exercise its discretion to impose the full range of sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment.

(ii) However, a sentence of imprisonment shall not exceed forty (40) years, except for juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, who may be sentenced for any term up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility.

(D)(i) A judge of the criminal division of circuit court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(ii) If release is ordered, the judge of the criminal division of

circuit court shall impose a period of probation for not less than three (3) years.

(c)(1) The juvenile may petition the court to review and modify the disposition at any time.

(2) If the juvenile's initial petition is denied, the juvenile must wait one (1) year from the date of the denial to file a new petition for modification.

(d) If the state or the juvenile files a petition to modify the juvenile court's disposition order before six (6) months prior to the juvenile's eighteenth birthday, the filing party bears the burden of proof.

(e)(1) If no hearing has been conducted six (6) months prior to the juvenile's eighteenth birthday, the court shall conduct a hearing to determine whether to release the juvenile, amend or add any juvenile disposition, or impose an adult sentence.

(2) In making its determination the court shall consider the following:

(A) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(B) The nature of the offense or offenses and the manner in which the offense or offenses were committed;

(C) The recommendations of the professionals who have worked with the juvenile;

(D) The protection of public safety;

(E) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation; and

(F) Victim impact evidence admitted pursuant to § 16-97-103.

(3) If the state seeks to impose an adult sentence, the state must prove by a preponderance of the evidence that the imposition of an adult sentence is appropriate and that public safety requires imposition.

(4)(A) Following a hearing, the court may enter any of the following dispositions:

(i) Release the juvenile;

(ii) Amend or add any juvenile disposition; and

(iii)(a) Exercise its discretion to impose the full range of sentencing available in circuit court, including probation, suspended imposition of sentence, and imprisonment.

(b) However, a sentence of imprisonment shall not exceed forty (40) years, except juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, who may be sentenced for any term up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility.

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(ii) If release is ordered, the court shall impose a period of probation for not less than three (3) years.

History. Acts 1999, No. 1192, § 7; 2001, No. 1582, § 4.

9-27-508. Extended juvenile jurisdiction records.

(a) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult, or until the juvenile's twenty-first birthday, whichever is longer.

(b)(1) If an adult sentence is imposed upon an extended juvenile jurisdiction offender, the records of that case shall be considered adult criminal records.

(2)(A) The juvenile court shall enter an order transferring the juvenile records to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal division of circuit court docket number and shall maintain the file as if the case had originated in the criminal division of the circuit court.

History. Acts 1999, No. 1192, § 8.

9-27-509. Division of Youth Services - Commitment of extended juvenile jurisdiction juveniles.

(a) The court has sole release authority for juveniles in extended juvenile jurisdiction proceedings.

(b) In every case where an order of commitment has been entered pursuant to an adjudication of delinquency, the facility to which the juvenile is committed shall, within thirty (30) days of the juvenile's commitment, prepare and file with the court a treatment case plan which shall:

(1) State the treatment plan for the juvenile; and

(2) State the anticipated length of commitment of the juvenile.

(c)(1) Upon determination that the juvenile has been rehabilitated, the Division of Youth Services of the Department of Human Services may petition the court for release.

(2) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the Division of Youth Services:

(A) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(B) The nature of the offense or offenses and the manner in which they were committed;

(C) The recommendations of the professionals who have worked with the juvenile;

(D) The protection of public safety; and

(E) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(3) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

History. Acts 1999, No. 1192, § 9.

9-27-510. Department of Correction - Placement.

(a)(1) A juvenile who has received an adult sentence to the Department of Correction shall not be transported to the Department of Correction until the juvenile is sixteen (16) years of age.

(2) If a juvenile receives a sentence to the Department of Correction prior to the juvenile's sixteenth birthday, the juvenile shall be housed by the Division of Youth Services of the Department of Human Services until such date, except as provided by court order or parole decision made by the Post Prison Transfer Board.

(b) A juvenile sentenced in the criminal division of circuit court who is less than sixteen (16) years of age when sentenced shall be committed to the custody of the Division of Youth Services until his or her sixteenth birthday, at which time he or she shall be transferred to the Department of Correction.

(c)(1)(A) Juveniles sentenced to the Department of Correction pursuant to extended juvenile jurisdiction are subject to parole as any other inmate within the Department of Correction.

(B) Juveniles adjudicated for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, are subject to parole.

(2) Juveniles will be given credit for time served in a juvenile detention or juvenile facility against any adult sentence.

History. Acts 1999, No. 1192, § 10; 2001, No. 1582, § 6

9-28-206. Disposition of delinquent juvenile.

When a juvenile division of chancery court, a circuit court, or any other court having jurisdiction of a juvenile under eighteen (18) years of age, finds a juvenile to be delinquent or to have committed a crime as defined by the laws of this state, the court may commit the juvenile to the Division of Youth Services of the Department of Human Services for an indeterminate period, not to exceed the twenty-first birthday of the juvenile.

History. Acts 1995, No. 1261, § 6; 1999, No. 1192, § 21.

9-28-208. Order of commitment.

(a) An order of commitment to the Division of Youth Services of the Department of Human Services shall state that the juvenile is found to be delinquent or to have committed a crime and shall state information regarding the underlying facts of the adjudication.

(b)(1) A court shall, with a committing order, transmit to the Division of Youth Services a copy of the risk assessment instrument and a report on the juvenile, setting forth in detail all available pertinent information concerning the juvenile's background, family status, school record, behavioral tendencies, and all other pertinent information that it may have, including the reasons for the juvenile's commitment.

(2) Information relating to the committing offense is exclusively for the benefit of the Division of Youth Services and shall not be disclosed by division officials or employees without written authorization of the committing court, except for data and statistical compilations as otherwise provided by law.

(c) Except when an extended juvenile jurisdiction offender is committed to the Division of Youth Services, an order of commitment shall remain in effect for an indeterminate period, not exceeding two (2) years, subject to extension by the committing court for additional periods of one (1) year if the court finds an extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(d) Commitment shall not exceed the twenty-first birthday of a juvenile.

(e) When an order of commitment includes recommendations for a specific type of placement, the Division of Youth Services shall consider those recommendations in making a placement.

History. Acts 1995, No. 1261, § 8; 1999, No. 1192, § 22.

9-28-210. Release.

(a)(1) In consideration of its juvenile correctional role, the Division of Youth Services of the Department of Human Services shall establish objective guidelines for length of stay when juveniles are committed to the division.

(2) Except when an extended juvenile jurisdiction offender or a juvenile committed to the Division of Youth Services from circuit court is committed to the Division of Youth Services, length-of-stay determinations shall be the exclusive responsibility of the Division of Youth Services, and committed juveniles shall be reintegrated into society at a pace determined by the seriousness of the committing offense, aggravating or mitigating circumstances, community compatibility, and clinical prognosis.

(3) When an extended juvenile jurisdiction offender has been committed to the Division of Youth Services, the committing court shall have sole release authority.

(4)(A) Upon determination that the juvenile has been rehabilitated, the Division of Youth Services may petition the court for release.

(B) The court shall conduct a hearing and shall consider

the following factors in making its determination to release the juvenile from the Division of Youth Services:

(i) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(ii) The nature of the offense or offenses and the manner in which they were committed;

(iii) The recommendations of the professionals who have worked with the juvenile;

(iv) The protection of public safety; and

(v) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(5) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

(b) The Division of Youth Services shall establish policies regarding the eligibility of juveniles for release consideration.

(c)(1) Whenever the Director of the Division of Youth Services, upon examination of all information and recommendations provided, shall determine that release of a juvenile is in the interest of both the state and the juvenile, the division shall grant release or petition the committing court for release if the juvenile is an extended juvenile jurisdiction offender.

(2) Except when an extended jurisdiction offender is committed to the Division of Youth Services, release decisions shall be made by the Director of the Division of Youth Services without the necessity of an application by or on behalf of a juvenile.

(3) In determining whether the release of a juvenile is in the best interest of both the state and the juvenile, the division shall consider the circumstances of the committing offense, any recommendations of the committing judge, any recommendations of the probation officer of the committing court, the juvenile's previous delinquency record, the availability of community programs, and the stability of the juvenile's home environment.

(d)(1) The committing court may, at any time, recommend that a juvenile be released from the custody of the Division of Youth Services.

(2) A recommendation for release shall be provided in writing to the Division of Youth Services stating the reasons release is deemed in the best interest of the juvenile and society.

(3) Except when an extended juvenile jurisdiction offender is committed to the Division of Youth Services, a final decision to release shall be made by the Division of Youth Services.

(e) Upon release from the custody of the Division of Youth Services, a juvenile shall remain under the jurisdiction of the committing court for an indeterminate period not to exceed two (2) years, except when an extended juvenile jurisdiction offender is committed to the Division of Youth Services.

History. Acts 1995, No. 1261, § 10; 1999, No. 1192, § 23.

9-28-211. Escape from youth services center or facilities.

(a) If any delinquent youth committed to the Division of Youth Services escapes or absents himself from a youth services center or facility without authorization, he may be returned to the facility by a law enforcement officer without further proceedings.

(b) No law enforcement officer, Department of Human Services' Institutional System Board member, Division of Youth Services employee, or other person shall be subject to suit or held criminally or civilly liable for his actions provided he acts in good faith and without malice in the apprehension and return of escapees.

History. Acts 1995, No. 1261, § 11.

SEXUAL OFFENSES INVOLVING MINORS

12-12-501. Title and purpose.

(a) This subchapter shall be known and may be cited at the "Arkansas Child Maltreatment Act".

(b) It is the purpose of this subchapter, through the use of complete reporting of child abuse, to

(1) Protect the best interest of the child;

(2) Prevent further harm to the child;

(3) Stabilize the home environment;

(4) Preserve family life; and

(5) Encourage cooperation among the states in dealing with child abuse.

History. Acts 1991, No. 1208, § 1; Acts 2001, No. 1210, § 1.

12-12-502. Regulations - Cooperative agreements.

(a) The director of the department shall promulgate regulations to implement the provisions of this subchapter.

(b) The director of the department shall initiate formal cooperative agreements with law enforcement agencies, prosecuting attorneys, and other appropriate agencies and individuals in order to implement a coordinated multidisciplinary team approach to intervention in reports involving severe maltreatment and all reports requested by the district prosecuting attorney pertaining to a law enforcement or prosecutor's investigation and may enter into cooperative agreements with other states to create a national child maltreatment registration system.

History. Acts 1991, No. 1208, § 14; 1997, No. 1234, § 1.

12-12-503. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Abandonment" means:

(A) Failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future;

(B) Failure to support or maintain regular contact with the juvenile without just cause; or

(C) An articulated intent to forego parental responsibility;

(2)(A) "Abuse" means any of the following acts or ommissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme and repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, illness, impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

(iv) Any injury which is at variance with the history given.

(v) Any nonaccidental physical injury or mental injury; or

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face;

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child age six (6) or younger on the face;

(b) Shaking a child age three (3) or younger; or

(c) Interfering with a child's breathing.

(B)(i) The list in subdivision(2)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" shall not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.

(ii) "Abuse" shall not include when a child suffers transient

pain or minor temporary marks as the result of an appropriate restraint if:

(a) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act § 9-28-401 et seq;

(b) The agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger or hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(f) The restraint is for a reasonable period of time.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause injury more serious than transient pain or temporary marks.

(iv) The age, size, and condition of the child, and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(3) "Caretaker" means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;

(4)(A) "Central intake", otherwise referred to as the "child abuse hotline", refers to a unit which shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this subchapter.

(B) Central intake shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

(5) "Child" or "juvenile" means an individual who:

(A) Is from birth to the age of eighteen (18);

(B) Is under the age of twenty-one (21) years, whether married or single, who was adjudicated delinquent under the Arkansas Juvenile Code of 1989 § 9-27-301 et. seq., for an act committed prior to the age of eighteen (18) years, and for whom the court to retains jurisdiction until the course has been completed;

(C) Was adjudicated dependent-neglected under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., before reaching the age of eighteen (18) years, and who, while engaged in a course of instruction or treatments, requests the court to retain jurisdiction until the course has been completed;

(6) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(7) "Department" means the Department of Human Services;

(8) "Deviate sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;

(9)(A)(i) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of death or physical injury to or kidnapping of any person.

(ii) If the act was committed against the will of the juvenile, then forcible compulsion has been used.

(B) The age, developmental state, and stature of the victim, and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(10) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(11) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

(12) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, which constitute:

(A) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

(B) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, excluding the failure to follow an individualized educational program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected;

(C) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of such condition was known or should have been known;

(D) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile;

(E) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(F) Failure, although able, to assume responsibility for the care and custody of the juvenile or participate in a plan to assume such responsibility; or

(G) Failure to appropriately supervise the juvenile which results in the juvenile's being left alone at an inappropriate

age or in inappropriate circumstances that put the juvenile in danger;

(13) "Parent" means a biological mother, an adoptive parent, a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction, to be the biological father of the juvenile;

(14) "Pornography" means:

(A) Obscene or licentious material, including pictures, movies and videos, lacking serious literary, artistic, political or scientific value, which, when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest; or

(B) Material which depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political or scientific value;

(15) "Serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(16) "Severe maltreatment" means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by the Arkansas Criminal Code, § 5-1-101 et seq., bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;

(17) "Sexual abuse" means:

(A) By a person ten (10) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

(iii) Indecent exposure; or

(iv) Forcing, permitting, or encouraging the watching of pornography or live sexual activity;

(B) Between a person eighteen (18) years of age or older

and a person not his or her spouse who is younger than sixteen (16) years of age;

(i) Sexual intercourse, deviate sexual activity, or sexual contact or solicitation; or

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(C) Between a person younger than eighteen (18) years of age and a sibling or caretaker:

(i) Sexual intercourse, deviate sexual activity, or sexual contact or solicitation; or

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

(18)(A) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.

(B) Provided, that nothing in this section shall permit normal affectionate hugging to be construed as sexual contact;

(19) "Sexual exploitation" means allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting a juvenile for any use or purpose; and

(20) "Subject of the report" means:

(A) The offender;
(B) The parents, guardians, and legal custodians of the child who is the subject to suspected maltreatment; and
(C) The child who is the subject of suspected maltreatment.

History. Acts 1991, No. 1208, § 2; 1993, No. 1126, §§ 3-5; 1995, No. 804, § 2; 1995, No. 1341, §§ 1-3; 1997, No. 1334, § 1; 1999, No. 36, § 1; 1999, No. 1340, §§ 22, 23, 24, 25, 34, 36. 2001, No. 1210, § 2.

12-12-504. Penalties.

(a)(1) Any person, official, or institution negligently or willfully failing to make notification when required by this subchapter shall be guilty of a Class C misdemeanor.

(2) Any person, official, or institution willfully making false notification pursuant to this subchapter, knowing such allegations to be false, shall be guilty of a Class A misdemeanor.

(3) Any person, official, or institution willfully making false notification pursuant to this subchapter, knowing such allegations to be false, and who has been previously convicted of making willful false allegations shall be guilty of a Class D felony.

(b) Any person, official, or institution required by this subchapter to make notification of suspected child maltreatment who willfully fails to do so shall be civilly liable for damages proximately caused by that failure.

(c) Any person who willfully permits, and any other person who encourages, the release of data or information contained in the central registry to persons to whom disclosure is not permitted by this subchapter shall be guilty of a Class A misdemeanor.

(d) Judges or prosecuting attorneys who fail to make notification when required by this subchapter shall not be subject to any of the penalties outlined in this subchapter.

History. Acts 1991, No. 1208, § 12; 1995, No. 1341, § 4; 1997, No. 1351, § 1.

12-12-505. Central registry.

(a) There is established within the Department of Human Services a statewide central registry for the collection of records of cases involving allegations of child maltreatment that are determined to be true pursuant to this subchapter.

(b)(1)(A)(i) Records of all cases where allegations are determined to be true shall be retained by the central registry.

(ii) If an offender is criminally convicted for an act which is the same act for which the offender is named in the central registry, the offender shall always remain in the central registry.

(iii) The department shall identify in its policy and procedures manual the types of child maltreatment that will automatically result in the removal of the name of an offender from the central registry. If an offender has been entered into the central registry as an offender for these named types of child maltreatment, the offender's name shall be removed from the central registry on reports of this type of child maltreatment when the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has lapsed since the closure of any protective services or foster care case opened as the result of this report.

(iv) The department shall identify in its policy and procedures manual the types of child maltreatment for which an offender can request that the offender's name be removed from the central registry. If an offender has been entered into the central registry as an offender for these named types of child maltreatment, the offender may petition the department requesting that the offender's name be removed from the central registry when the offender has not had a subsequent true report of this type for five (5) years and more than five (5) years have elapsed since the closure of any protective services or foster care case opened as the result of this report. The department shall develop policy and procedures to assist it in determining whether or not to remove the offender's name from the central registry. If the department denies the request for removal of the name from the central registry, the offender may request an administrative hearing within thirty (30) days from receipt of the department's decision.

(B) Records of all cases where allegations are determined to be unsubstantiated shall be promptly expunged.

(2)(A) Information included in the automated data system shall be retained indefinitely to assist the department in assessing future risk and safety.

(B) Hard copy records of unsubstantiated reports shall be retained no longer than eighteen (18) months for purposes of audit.

(c) The central registry may adopt such rules and regulations as may be necessary to encourage cooperation with other states in exchanging true reports and to effect a national registration system.

(d) The Director of the Department of Human Services shall adopt rules and regulations necessary to carry out the provisions of this subchapter, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except that the director shall not commence the process under the Administrative Procedure Act § 25-15-201 et seq., until the proposed rules and regulations have been reviewed by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs, and the Senate Interim Committee on Children and Youth.

History. Acts 1991, No. 1208, §§ 8, 9; 1993, No. 1088, § 1; 1995, No. 1341, § 5; 1997, No. 1334, § 2; 2001, No. 1210, § 3; 2001, No. 1434, § 1.

12-12-506. Disclosure of central registry data.

(a)(1) Reports made pursuant to this subchapter shall be confidential and may be used or disclosed only as provided in this section.

(2)(A) If the allegations are determined to be true in accordance with § 12-12-512, disclosure is absolutely limited to:

(i) The administration of the adoption, foster care, children's protective services programs, or child care licensing programs of any state;

(ii) Federal, state, or local government entities, or any agent of such entities, having a need for such information in order to carry out its responsibilities under law to protect children from abuse or neglect;

(iii) Any person who is the subject of a true report;

(iv) A civil or administrative proceeding connected with the administration of the Arkansas Child Welfare State Plan where the court or hearing officer determines that the information is necessary for the determination of an issue before the court or agency;

(v) The administration of any federal or federally assisted program which provides assistance, in cash or in kind, or services directly to individuals on the basis of need;

(vi) An audit or similar activity conducted in connection with the administration of such plan or program by any governmental agency which is authorized by law to conduct the audit or activity;

(vii) A person, agency, or organization engaged in a bona fide research or evaluation project, but without information identifying individuals named in a report or record, provided that:

(a) Having that information open for review is essential to the research or evaluation;

(b) Prior written approval is granted by the Director of the Department of Human Services; and

(c) The child, through his parent, guardian, or guardian ad litem, gives permission to release the information;

(viii) A properly constituted authority, including

multidisciplinary teams referenced in § 12-12-502(b), investigating a report of known or suspected child abuse or neglect or providing services to a child or family that is the subject of a report;

(ix)(a) The Division of Child Care and Early Childhood Education of the Department of Human Services and the child care facility owner or operator who requested the registry information through a signed notarized release from an individual who is a volunteer or who has applied for employment or who is currently employed by a child care facility or who is the owner or operator of a child care facility.

(b) This disclosure shall be for the limited purpose of providing central registry background information and shall indicate a true finding only;

(x) Child abuse citizen panels described in the Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;

(xi) Child fatality review panels as authorized by the department;

(xii) To the general public, the findings or information about the case of child abuse or neglect that has resulted in a child fatality or near fatality but the central registry may redact any information concerning siblings, attorney-client communications, and other confidential communications;

(xiii) A grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(xiv) The current foster parents of a child who is a subject of a report;

(xv) Individual federal and state senators and representatives who agree not to allow any redisclosure of information, provided that no disclosure shall be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(xvi) A court-appointed special advocate upon presentation of an order of appointment for a child who is a subject of a report; and

(xvii) The attorney ad litem of a child who is the subject of a report.

(B) Reports of investigative determinations that are true shall be disclosed to the Division of Child Care and Early Childhood Education of the Department of Human Services, by oral report only, for purposes of enforcement of licensing laws and regulations.

(b) Any licensing or registering authority in receipt of initial notification of suspected child maltreatment may access the central registry to the extent necessary to carry out its official responsibilities, but the information must be maintained as confidential.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this section.

(2) Provided, however, that a local educational agency or a school counselor shall forward all true reports of child maltreatment received from the department whenever a child transfers from one (1) local educational agency to another, and shall notify the department of the child's new school, and address, if known.

(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(d) True reports that have been administratively appealed pursuant to this subchapter and that have been stayed because of criminal proceedings shall not be disclosed other than for administration of adoption, foster care, or children's protective services program.

(e)(1) The department shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed, in camera, the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, the information shall be disclosed to the prosecuting attorney or law enforcement officers on request.

(f) Within ten (10) days following an investigative determination, the department shall provide the person or agency making notification of suspected child maltreatment information as to whether an investigation has been conducted and whether services have been offered.

(g) The department may disclose the investigative determination of any offender when the offender is engaged in child-related activities or employment and the department has determined that children under the care of the offender are at risk of maltreatment by the offender.

(h) Nothing in this subchapter shall be construed to prevent subsequent disclosure by the subject of the report.

(i) Any records of screened-out reports of child maltreatment shall not be disclosed and may only be used within the department for purposes of administration of the program.

History. Acts 1991, No. 1208, § 9; 1992 (1st Ex. Sess.), No. 49, § 2; 1995, No. 1341, § 6; 1997, No. 1334, § 3; 1999, No. 1222, §§ 4, 5; 1999, No. 1340, §§ 26, 27; 2001, No. 1210, § 4.

12-12-507. Reports of suspected abuse or neglect.

(a) Any person with reasonable cause to suspect child maltreatment or that a child has died as a result of child maltreatment, or who observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment, may immediately notify the child abuse hotline.

(b) When any of the following has reasonable cause to suspect that a child has been subjected to child maltreatment or has died as a result of child maltreatment, or who observes the child being subjected to conditions or circumstances which would reasonably result in child maltreatment, he or she shall immediately notify the child abuse hotline.

(1) Any child or foster care worker;

(2) A coroner;

(3) A day care center worker;

(4) A dentist;

(5) A domestic abuse advocate;

(6) A domestic violence shelter employee;

(7) A domestic violence shelter volunteer;

(8) An employee of the Division of Youth Services of the Department of Human Services;

(9) An employee working under contract for the Division of Youth Services of the Department of Human Services;

(10) A family service worker;

(11) A judge;

(12) A law enforcement official;

(13) A licensed nurse;

(14) Any medical personnel who may be engaged in admission, examination, care, or treatment of persons;

(15) A mental health professional;

(16) An osteopath;

(17) A peace officer;

(18) A physician;

(19) A prosecuting attorney;

(20) A resident intern;

(21) A school counselor;

(22) A school official;

(23) A social worker;

(24) A surgeon; or

(25) A teacher.

(c) No privilege or contract shall relieve anyone required by this subchapter to make notification of the requirement of making notification.

(d) In the event that the child abuse hotline receives notification that a client or a resident of any facility licensed or registered by the State of Arkansas has been subjected to child maltreatment while at such a facility, the child abuse hotline shall immediately notify that facility's licensing or registering authority of its receipt of initial notification of suspected maltreatment.

(e)(1) When a person, agency, corporation, or partnership then providing substitute care for any child in the custody of the department or a department employee or employee's spouse or other person residing in the home is reported as being suspected of child maltreatment, the investigation shall be conducted pursuant to procedures established by the department.

(2)(A) Such procedures shall include referral of allegations to the Department of Arkansas State Police or appropriate law enforcement agency should the allegation involve severe maltreatment.

(B) The investigating agency shall immediately notify local law enforcement of all reports of severe maltreatment.

(f)(1) The child abuse hotline shall accept a report when the allegations, if true, would constitute child maltreatment as defined in § 12-12-503(6) and as long as sufficient identifying information is provided to identify and locate the child or the family.

(2) The child abuse hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur, but the report shall not be determined to be true unless the child suffered an injury as the result of the act:

(A) Throwing, kicking, burning, biting, or cutting a child;

(B) Striking a child with a closed fist;

(C) Shaking a child age four or older; or

(D) Striking a child age seven or older on the face.

(3) The child abuse hotline shall accept a report of physical abuse, if any of the following intentional or knowing acts are alleged to occur:

(A) Shaking a child age three or younger;

(B) Striking a child age six or younger on the face; or

(C) Interfering with a child's breathing.

(4)(A) The child abuse hotline shall accept a report of physical abuse if a child suffers an injury as the result of a restraint.

(B) The report shall not be determined to be true if the injury is a minor temporary mark or causes transient pain and was an acceptable restraint as outlined at § 12-12-503(2)(C)(ii).

(5) The child abuse hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur, but the report shall not be determined to be true unless the child suffered an injury as the result of the act:

(A) Throwing, kicking, burning, biting, or cutting a child;

(B) Striking a child with a closed fist;

(C) Shaking a child;

(D) Interfering with a child's breathing; or

(E) Striking a child on the face.

(g)(1) The child abuse hotline shall accept a report if the child or the child's family is present in Arkansas or the incident occurred in Arkansas.

(2) If the child or the child's family resides in another state, the hotline shall screen out the report, transfer the report to the hotline of the state where the child or the child's family resides or the incident occurred, and send a copy to the appropriate investigating agency in Arkansas to initiate courtesy interviews.

(3) If the incident occurred in Arkansas and the victim, parents or offender no longer reside in Arkansas, the hotline shall accept the report and the Arkansas investigating agency shall contact the other state and request a courtesy interview with the out-of-state subject of the report.

(h) The child abuse hotline shall accept telephone calls or other communications alleging that a child is dependent-neglected, as defined in § 9-27-303(15), and shall immediately refer this information to the Department of Human Services.

History. Acts 1991, No. 1208, §§ 3, 4; 1993, No. 1126, § 6; 1995, No. 1341, §§ 7, 8; 1999, No. 214, § 1; 2001, No. 1210, § 5; 2001, No. 1236, § 1.

12-12-508. Radiology procedures, photographs, and medical records.

(a) Any person who is required to make notification under this subchapter may take or cause to be taken radiology procedures and photographs or compile medical records which may be probative as to the existence or extent of child maltreatment.

(b) Hospitals and clinics may make videotapes which may be probative as to the existence or extent of child maltreatment.

(c) The Department of Human Services or law enforcement officials shall have access to the results of radiology procedures, videotapes, photographs, or medical records upon request.

(d) The department and law enforcement officials shall be allowed access to the child's public and private school records during the course of the child maltreatment investigation.

History. Acts 1991, No. 1208, § 3; 1997, No. 535, § 1; 1999, No. 1340, § 28; 2001, No. 1210, § 6.

12-12-509. Investigation - Examinations of children.

(a)(1) The Department of Human Services shall cause an investigation to be made upon receiving initial notification of suspected child maltreatment.

(2)(A) All investigations shall begin within seventy-two (72) hours.

(B) However, if the notice contains an allegation of severe maltreatment then the department shall immediately notify law enforcement, and the department shall initiate an investigation in cooperation with law enforcement agencies and the prosecuting attorney within twenty-four (24) hours.

(3)(A) The prosecuting attorney may provide written notice to the department, that the department does not need to provide notification of the initial maltreatment report to the prosecuting attorney's office.

(B) Upon receiving the notification, the department shall not be required to provide notification of the initial maltreatment report to the prosecuting attorney's office.

(b) The investigation shall seek to ascertain:

(1) The existence, cause, nature, and extent of the child maltreatment;

(2) The existence and extent of previous injuries;

(3) The identity of the person responsible therefor;

(4) The names and conditions of other children in the home;

(5) The circumstances of the parents or caretakers of the child;

(6) The environment where the child resides;

(7) The relationship of the child or children with the parents or caretakers; and

(8) All other pertinent data.

(c)(1)(A) The investigation shall include interviews with the parents.

(B) If neither parent is the alleged offender, the investigation shall also include an interview with the alleged offender.

(C) The investigation shall include an interview with any other relevant persons.

(2)(A) The investigation shall include an interview with the child separate and apart from the alleged offender or any representative or attorney for the alleged offender.

(B) However, if the age or abilities of the child render an interview impossible, the investigation shall include observation of the child.

(3) The investigation may include a physical examination, radiology procedures, photographs, and a psychological or psychiatric examination of all children subject to the care, custody, or control of the same caretaker.

(4) If, after exercising reasonable diligence in conducting any or all interviews, the subjects of the interviews cannot be located or are unable to communicate, the efforts to conduct such interviews shall be documented and the investigation shall proceed pursuant to this subchapter.

(d)(1) An investigative determination shall be made in each investigation within thirty (30) days regardless of whether the investigation is conducted by the Department of Human Services, the Family Protection Unit of the Department of Arkansas State Police, or local law enforcement.

(2) However, this procedural requirement shall not be considered as a factor to alter the investigative determination in any judicial or administrative proceeding.

History. Acts 1991, No. 1208, § 4; 1995, No. 1341, § 9; 1997, No. 535, § 2; 1997, No. 1334, § 4; 1999, No. 626, § 1; 2001, No. 1210 § 7.

12-12-510. Investigative powers.

(a) The person conducting the investigation shall have the right to enter into or upon the home, school, or any other place for the purpose of conducting and interviewing or completing the investigation required by this subchapter.

(b) If necessary access or admission is denied, the department may petition the proper juvenile division of chancery court for an ex parte order of investigation requiring the parent, caretaker, or persons denying access to any place where the child may be to allow entrance for the interviews, examinations, and investigations.

(c) However, upon application to the court by the parents, caretaker, or persons denying access to the child showing good cause, the court may issue a written order to stay the order of investigation pending a hearing to be held within seventy-two (72) hours.

(d) The department shall investigate all allegations of child maltreatment without regard to the parent's practice of his religious beliefs and shall only consider whether the acts or omissions of the parent are abusive or neglectful as defined by the Arkansas Code.

(e) The person conducting the investigation shall have the right to inspect personnel records of employees and volunteers in any place where an allegation of child maltreatment has been reported as having occurred at that place but the alleged offender is unknown.

(f) The investigator shall have the discretion in the child's best interest to limit the persons allowed to be present when a child is being interviewed concerning allegations of child maltreatment.

History. Acts 1991, No. 1208, § 4; 1993, No. 1126, § 7; 1997, No. 1334, § 5; 1999, No. 1340, § 29.

12-12-511. Investigation to be closed.

(a) If at any time before or during the investigation it is determined that the alleged offender is not a caretaker of any child, and the alleged victim has attained majority prior to notification, the child maltreatment investigation shall be closed notwithstanding any criminal investigation.

(b)(1) Any provision to the Arkansas Uniform Rules of Evidence notwithstanding, any privilege between a minister and any person confessing to or being counseled by the minister shall not constitute grounds for excluding evidence at any dependency-neglect proceeding or proceedings involving custody of a minor.

(2) If at any time before or during the investigation it appears that the offender is identified and is not a caretaker of the victim child, excluding investigations of sexual abuse, the Department of Human Services shall:

(A) Refer the matter to the appropriate law enforcement agency;

(B) Close its investigation; and

(C) Forward a copy of its findings to the appropriate law enforcement agency for that agency's further use in any criminal investigation.

(3)(A) If the appropriate law enforcement agency subsequently determines that the offender is a caretaker, it shall immediately notify the department of its determination.

(B) Thereupon the department shall reopen and continue its investigation in compliance with all other requirements contained in this subchapter.

(c) If at any time before or during the investigation the department is unable to locate or identify the alleged offender because the alleged maltreatment occurred more than five (5) years ago or in another state, the department shall consider the report unable to be completed and placed in inactive status.

History. Acts 1991, No. 1208, § 4; 1995, No. 1341, § 10; 1997, No. 1334, § 6. 2001, No. 1210, § 8.

12-12-512. Child maltreatment investigative determination - Notice of finding - Amendment and appeal.

(a) Upon completion of the investigation, the Department of Human Services shall determine that the allegations of child maltreatment are:

(1)(A) Unsubstantiated.

(B) This determination shall be entered when the allegation is not supported by a preponderance of the evidence.

(C) There can be no disclosure of unsubstantiated reports except:

(i) For release to the prosecutor for the limited purpose of prosecution of a person who willfully makes false notification pursuant to this subchapter;

(ii) To a subject of the report; and

(iii) To a court if the information in the record is necessary for a determination of an issue before the court; or

(2)(A) True.

(B) This determination shall be entered when the allegation is supported by a preponderance of the evidence.

(C) A determination of true shall not be entered when a parent practicing his religious beliefs does not, for that reason alone, provide medical treatment for a child, but in lieu of such treatment the child is being furnished with treatment by spiritual means alone, through prayer, in accordance with a recognized religious method of healing by an accredited practitioner.

(D)(i) Notwithstanding subdivision (a)(2)(A) of this section, the department shall have the authority to pursue:

(a) Any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction;

(b) Medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from child with life-threatening conditions.

(ii) Except with respect to the withholding of medically indicated treatments from disabled infants with life-threatening conditions, case-by-case determinations concerning the exercise of authority in this subsection shall be within the sole discretion of the department.

(b) If the investigation cannot be completed, the investigation shall be determined incomplete and placed in inactive status.

(c)(1)(A) In every case where a report is determined to be true, the department shall notify each subject of the report of the determination.

(B) Notification shall be in writing by hand delivery or by certified mail, restricted delivery or by a process server.

(C) Notification shall include the following:

(i) The investigative determination, true or unsubstantiated, exclusive of the source of the notification;

(ii) A statement that the person named as the offender of the true report may request an administrative hearing;

(iii) A statement that such request must be made to the department within thirty (30) days of receipt of the hand delivery or mailing of the notice of determination; and

(iv) The name of the person making notification, the person's occupation, and where he or she can be reached.

(2) The administrative hearing process must be completed within ninety (90) days from the date of the receipt of the request for a hearing, provided that:

(A) Delays in completing the hearing that are attributable to the petitioner shall not count against the ninety-day limit;

(B) Failure to complete the hearing process in a timely fashion shall not deprive the department or a court reviewing the child maltreatment determination of jurisdiction to make a final agency determination or review a final agency determination pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(C)(i) The ninety-day limit shall not apply if there is an ongoing criminal investigation or criminal charges have or will be filed regarding the occurrence that is the subject of the child maltreatment report.

(ii) In those cases the administrative hearing shall be stayed pending final disposition of the criminal proceedings.

(iii) It shall be the duty of the petitioner to report the final disposition of the criminal proceeding to the department.

(iv) Each report shall include a file-marked copy of the criminal disposition.

(v) The request for administrative hearing shall be deemed waived if the petitioner fails to report the disposition of the criminal proceedings within thirty (30) days of the entry of a dispositive judgement or order.

(vi) If the criminal proceedings have reached no final outcome within twelve (12) months of the filing of the administrative appeal, the administrative appeal will be deemed waived if the petitioner fails to provide a written statement of the status of the criminal proceedings every sixty (60) days and a disposition report within thirty (30) days of the entry of a dispositive judgement or order.

(3) No action by appeal shall be brought more than two (2) years after the completion of the investigation.

(4) When the department conducts such administrative appeal hearings, the chief counsel of the department is authorized to require the attendance of witnesses and the production of books, records, or other documents through the issuance of subpoenas when such testimony or information is necessary to adequately present the position of the department, the investigating protective services agency, or the alleged offender or adult subject of a report.

(d) Failure to obey the subpoena may be deemed a contempt, punishable accordingly.

(e) Administrative hearing decisions and all exhibits submitted at the hearing are confidential and may be used or disclosed only as provided in § 12-12-506(a)(2)(A).

History. Acts 1991, No. 1208, §§ 5, 7; 1993, No. 1126, § 8; 1995, No. 804, § 3; 1995, No. 1341, § 11; 1997, No. 1334, § 7; 1999, No. 1340, § 30. 2001, No. 1210, § 9.

12-12-513. Requests for subpoenas - Form.

(a) Requests for subpoenas shall be granted by the chief counsel of the Department of Human Services or a designee if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(b) Subpoenas issued pursuant to the authority of the chief counsel of the department shall be substantially in the following form:

"The State of Arkansas to the Sheriff of _____ County: You are commanded to subpoena (name) _____, (address) _____ _____, to attend a proceeding before the Arkansas Department of Human Services to be held at _____ on the _____ day of _____, 20 __, at __ m., and testify and/or produce the following books, records, or other documents, to wit: _____ in a matter of (style of proceeding) _____ _____ to be conducted under the authority of _____. WITNESS my hand this _____ day of _____, 20 __.

_____"
Chief Counsel, or designee, Department of Human Services

(c)(1) Subpoenas provided for in this section shall be served in the manner as now provided by law, and returned, and a copy made and kept by the Department of Human Services.

(2) The fees and mileage for officers serving the subpoenas and witnesses answering the subpoenas shall be the same as now provided by law.

(d) Witnesses duly served with subpoenas issued pursuant to the authority provided in this section who shall refuse to testify or give evidence may be cited on affidavit through application of the chief counsel of the department to the Circuit Court of Pulaski County or any circuit court of the state where the subpoenas were served.

(e) Failure to obey the subpoena may be deemed a contempt, punishable accordingly.

History. Acts 1991, No. 1208, § 7. 2001, No. 1210, § 10.

12-12-514. Child maltreatment investigative report.

(a) The agency responsible for the investigation shall make a complete written report of the investigation by the conclusion of the thirty-day time period set forth in § 12-12-509(d) of this subchapter.

(b) The report shall include the following information:

(1) The names and addresses of the child and his legal parents and other caretakers of the child, if known;

(2) The child's age, sex, and race;

(3) The nature and extent of the child's present and past injuries;

(4) The investigative determination;

(5) The nature and extent of the child maltreatment, including any evidence of previous injuries or child maltreatment to the child or his siblings;

(6) The name and address of the person responsible for the injuries or child maltreatment, if known;

(7) Services offered and accepted;

(8) Family composition;

(9) The source of the notification; and

(10) The person making the notification, his occupation, and where he can be reached.

(c)(1) A copy of the written report and any supporting documentation, including statements from witnesses and transcripts of interviews, shall immediately be filed at no cost with the central registry.

(2) Notification of the investigative determination shall be provided to the appropriate law enforcement agency and prosecuting attorney's office regarding reports of severe maltreatment.

(d) Notwithstanding any provision of this subchapter, the Department of Human Services shall forward the investigative determination, exclusive of the source of the notification, the name of the person making notification, the person's occupation, and where he or she can be reached, to the parents and alleged offender by hand delivery or by certified mail, restricted delivery, addressed to the recipient's last known address.

(e) The report, exclusive of information identifying the person making the notification, shall be admissible in evidence in any proceeding related to child maltreatment.

History. Acts 1991, No. 1208, § 6; 1995, No. 1341, § 12; 1997, No. 1334, § 8; 2001, No. 1210, § 1.

12-12-515. Provision of information to person or agency making initial notification of suspected maltreatment.

(a)(1) If the person or agency making the initial notification of suspected child maltreatment is required to do so by this subchapter, the Department of Human Services, within ten (10) business days of the child maltreatment investigative determination, shall provide to the person the following information:

(A) The investigative determination; and

(B) Services offered and provided.

(2)(A) The department shall provide the local educational agency, specifically to the school counselor where the maltreated child attends school, a report indicating the department's founded investigative determination regarding the child and the services offered or provided by the department to the child.

(B)The department shall also provide the local educational agency, specifically the school counselor, a report indicating the department's founded investigative determination on any juvenile who is named as the offender in a true report and the services offered or provided by the department to the juvenile offender.

(3) Any local educational agency receiving such information from the department shall make this information, if it is a true report, a part of the child's permanent educational record and shall treat such information as educational records are treated under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(b)(1) The department may provide information to a person or agency that provides professional services such as medical examination of, an assessment interview with, or diagnosing, caring for, treating, or supervising a victim of maltreatment.

(2) This information may include:

(A) The investigative determination or the investigation report; and

(B) The services offered and provided.

History. Acts 1991, No. 1208, § 9; 1992 (1st Ex. Sess.), No. 49, § 1; 1995, No. 1341, § 13; 1997, No. 1334, § 9; 2001, No. 1210, § 12.

12-12-516. Protective custody of children.

(a)(1) A police officer, a law enforcement official, a juvenile court judge during juvenile proceedings, or a designated employee of the Department of Human Services may take a child into protective custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody without the consent of the parent or the guardian, whether or not additional medical treatment is required, if the child is dependent-neglected, as defined in § 9-27-303(15), or if the circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or caretaker presents an immediate danger of severe maltreatment.

(2) However, such custody shall not exceed seventy-two (72) hours, except in the event that the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case, protective custody may be extended through the next business day following the weekend or holiday.

(b) The individual taking the child into protective custody may give effective consent for medical, dental, health, and hospital services during protective custody.

(c) In any case in which protective custody is invoked, the individual taking the child into protective custody shall notify the department in order that a child protective proceeding may be initiated within the time specified in this section.

(d) The department or prosecuting attorney is empowered to file petitions in the appropriate court seeking imposition of penalties for violation of this subchapter.

History. Acts 1991, No. 1208, § 10; 1999, No. 1340, § 31. 2001, No. 1210, § 13.

12-12-517. Liability.

(a) Any person or agency required to participate and acting in good faith in making notification, the taking of photographs or x rays, or the removal of a child while exercising protective services shall be immune to suit and to liability, both civil and criminal.

(b) All persons making notification not named in this section, if acting in good faith, shall be immune from liability.

History. Acts 1991, No. 1208, § 11.

12-12-518. Privileged communications as evidence - Exception.

(a) It is the public policy of the State of Arkansas to protect the health, safety, and the welfare of minors within the state.

(b) In order to effectuate that policy:

(1)(A) No privilege shall prevent anyone from reporting child maltreatment when the information is obtained from a child.

(B) No privilege shall prevent anyone, except between a lawyer and client or between a minister, including a Christian Science practitioner, and any person confessing to or being counseled by the minister, from testifying concerning child maltreatment when the information is obtained from a child;

(2) No privilege, except between a lawyer and client or between a minister, including a Christian Science practitioner, and any person confessing to or being counseled by the minister, shall prevent anyone from reporting or testifying concerning child maltreatment when the information is obtained from an adult;

(3) When any physician, psychologist, psychiatrist, or licensed counselor or therapist conducts interviews with or provides therapy to any subject of a report of suspected child maltreatment for purposes related to child maltreatment, the physician, psychologist, psychiatrist, or licensed counselor or therapist shall be deemed to be performing services on behalf of the child;

(4) Adult subjects of a report of suspected child maltreatment cannot invoke privilege on the child's behalf; and

(5) Transcripts of testimony introduced in a child maltreatment proceeding pursuant to this section shall not be received into evidence in any other civil or criminal proceeding.

History. Acts 1991, No. 1208, § 13; Acts 2001, No. 1210, § 14.

12-12-519. Custody of Children and Services to Families.

(a)(1) During the course of any child maltreatment investigation, whether conducted by the Department of Human Services, the Department of Arkansas State Police, or local law enforcement, the Department of Human Services shall assess whether or not the child can safely remain in the home.

(2) The child's health and safety shall be the paramount concern in determining whether or not to remove a child from the custody of his parents.

(b)(1)(A) If an investigation determines that the child cannot safely remain at home, the Department of Human Services shall take steps to remove the child under protective custody as outlined in § 12-12-516 or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(B) After the Department of Human Services has removed the child, the child shall be placed in a licensed or approved foster home, shelter or facility, or an exempt child welfare agency as defined at § 9-28-402(12).

(C) No one, including the family, the Department of Human Services, the Department of Arkansas State Police, or local law enforcement, shall allow the child to be placed in a nonapproved or nonlicensed foster home, shelter or facility.

(2) If an investigation determines that the child can safely remain at home, the parents retain the right to keep the child at home or to place the child outside the home.

(c)(1) If the child maltreatment investigation is determined to be true, the Department of Human Services may open a protective services case.

(2) If the Department of Human Services opens a case, it shall provide services to the family in an effort to prevent additional maltreatment to the child or the removal of the child from the home.

(3) The services shall be relevant to the needs of the family.

(4) If at any time during the protective services case, the Department of Human Services determines that the juvenile cannot safely remain at home, it shall take steps to remove the child under protective custody as outlined in § 12-12-516 or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(d)(1) If the report of child maltreatment is unsubstantiated, the Department of Human Services may offer supportive services to a family.

(2) The family may accept or reject supportive services at any time.

(3) Any family may request supportive services from the department.

(4) Supportive services shall be offered for the purpose of preventing child maltreatment.

History. Acts 2001, No. 1210, § 15.

12-12-901. Title.

This subchapter shall be known and may be cited as the "Sex and Child Offender Registration Act of 1997".

History. Acts 1997, No. 989, § 1.

12-12-902. Legislative findings.

The General Assembly finds that sex offenders pose a high risk of reoffending after release from custody, that protecting the public from sex offenders is a primary governmental interest, that the privacy interest of persons adjudicated guilty of sex offenses is less important than the government's interest in public safety, and that the release of certain information about sex offenders to criminal justice agencies and the general public will assist in protecting the public safety.

History. Acts 1997, No. 989, § 2.

12-12-903. Definitions.

For the purposes of this subchapter:

(1) "Adjudication of guilt" or other words of similar import means a:

(A) Plea of guilty;

(B) Plea of nolo contendere;

(C) Negotiated plea;

(D) Finding of guilt by a judge; or

(E) Finding of guilt by a jury;

(2)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) "Administration of criminal justice" also includes

criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(3) "Aggravated sex offense" means an offense in the Arkansas Code substantially equivalent to "aggravated sexual abuse" as defined in 18 U.S.C § 2241 as it existed on January 1, 2001, which principally encompasses:

(A) Engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; or

(B) Engaging in sexual acts involving the penetration of victims below the age of twelve (12);

(4) "Change of address" or other words of similar import mean a change of residence or a change for more than thirty (30) days of temporary domicile, change of location of employment, education or training, or any other change that alters where an offender regularly spends a substantial amount of time;

(5) "Criminal justice agency" means a government agency or any subunit thereof which is authorized by law to perform the administration of criminal justice and which allocates more than one-half (1/2) of its annual budget to the administration of criminal justice;

(6) "Local law enforcement agency having jurisdiction" means the:

(A) Chief law enforcement officer of the municipality in which an offender resides or expects to reside; or

(B) County sheriff, if the municipality does not have a chief law enforcement officer or if an offender resides or expects to reside in an unincorporated area of a county;

(7) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminally sexual acts to a degree that makes the person a menace to the health and safety of other persons;

(8) "Personality disorder" means an enduring pattern of inner experience and behavior that:

(A) Deviates markedly from the expectation of the person's culture;

(B) Is pervasive and inflexible across a broad range of personal and social situations;

(C) Leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning;

(D) Is stable over time;

(E) Has its onset in adolescence or early adulthood;

(F) Is not better accounted for as a manifestation or consequence of another mental disorder; and

(G) Is not due to the direct physiological effects of a substance or a general medical condition;

(9) "Predatory" means an act directed at a stranger or a person with whom a relationship has been established or promoted for the primary purpose of victimization;

(10)(A) "Residency" means the place where a person lives notwithstanding that there may be an intent to move or return at some future date to another place;

(B) "Residency" also includes place of employment, training, or education;

(11) "Sentencing court" means the judge of the court that sentenced the offender for the sex offense;

(12) "Sex offense" for the purpose of this subchapter includes, but is not limited to:

(i)(a) Rape, § 5-14-103;

(b) Carnal abuse in the first degree, § 5-14-104 [repealed];

(c) Carnal abuse in the second degree, § 5-14-105 [repealed];

(d) Carnal abuse in the third degree, § 5-14-106 [repealed];

(e) Sexual misconduct, § 5-14-107;

(f) Sexual abuse in the first degree, § 5-14-108;

(g) Sexual abuse in the second degree, § 5-14-109;

(h) Sexual solicitation of a child, § 5-14-110;

(i) Violation of a minor in the first degree, § 5-14-120;

(j) Violation of a minor in the second degree, § 5-14-121;

(k) Incest, § 5-26-202;

(l) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(m) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(n) Employing or consenting to use of child in sexual performance, § 5-27-402;

(o) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(p) Producing, directing, or promoting sexual performance, § 5-27-403;

(q) Promoting prostitution in the first degree, § 5-70-104;

(r) Stalking, § 5-71-229;

(s) Indecent exposure to a person under the age of twelve (12) years, § 5-14-112(b); or

(t) Exposing another person to human immunodeficiency virus, § 5-14-123;

(u) Kidnapping pursuant to § 5-11-102(a) when the victim is a minor and the offender is not the parent of the victim;

(v) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;

(w) Permitting abuse of a child pursuant to § 5-27-221;

(x) Computer child pornography; § 5-27-603;

(y) Computer exploitation of a child in the first degree,

§ 5-27-605(a).

(ii) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision (12)(A)(i) of this section;

(iii) An adjudication of guilt for an offense of the law of another state, for a federal offense, for a tribal court offense, or for a military offense:

(a) Which is similar to any of the offenses enumerated in subdivision (12)(A)(i) of this section; or

(b) When that adjudication of guilt requires registration under another state's sex offender registration laws; or

(c) A violation of any former law of this state which is substantially equivalent to any of the offenses enumerated in subdivision

(B)(i) The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense, even though the offense is not enumerated in subdivision (12)(A)(i) of this section.

(ii) This authority is limited to sex offenses enacted or amended at a later date by the General Assembly unless the General Assembly expresses its intent not to consider the offense to be a true sex offense for the purposes of this subchapter;

(13)(A) "Sex offender" means a person who is adjudicated guilty, adjudicated delinquent and ordered to register by the juvenile court, or acquitted on the grounds of mental disease or defect of a sex offense.

(B) Unless otherwise specified, "sex offender" includes those individuals classified by the court as "sexually violent predators";

(14) "Sex Offenders Assessment Committee" means a group of citizens appointed by the Governor with a specific composition in conformance with 42 U.S.C. § 14071(a)(2)(A), as it existed on January 1, 2001;

(15) "Sex Offender Screening and Risk Assessment" means the individuals or agencies qualified by the Sex Offenders Assessment Committee to perform assessments of sex offenders;

(16) "Sexually violent offense" means any state, federal, tribal, or military offense which includes a sexual act as defined in 18 U.S.C. §§ 2241 and 2242, as they existed on January 1, 2001, with another person if the offense is nonconsensual regardless of the age of the victim; and

(17) "Sexually violent predator" means a person who has been adjudicated guilty, adjudicated delinquent and ordered to register by the juvenile court judge, or acquitted on the grounds of mental disease or defect of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

History. Acts 1997, No. 989, § 3; 1999, No. 1353, § 1. 2001, No. 1743, § 2.

12-12-904. Failure to register - Failure to comply with reporting requirements.

(a)(1) A person who fails to register or who fails to report changes of address, employment, education, or training, or who refuses to cooperate with the assessment process as required under this subchapter shall be guilty of a Class D felony.

(2) It is an affirmative defense to prosecution if:

(A)(i) The delay in reporting a change in address is caused by:

(a) An eviction;

(b) A natural disaster; or

(c) Any other unforeseen circumstance; and

(B) The person refuses to cooperate with the assessment on the basis of the right to avoid self-incrimination.

(b) Any agency or official subject to reporting requirements under this subchapter that knowingly fails to comply with such reporting requirements shall be guilty of a Class B misdemeanor.

History. Acts 1997, No. 989, § 11; 1999, No. 1353, § 2. 2001, No. 1743, § 3.

12-12-906. Duty to register generally - Review of requirements with offenders.

(a)(1)(A) At the time of adjudication of guilt, the sentencing court shall enter on the judgment and commitment or judgment and disposition form whether or not the offender is required to register as a sex offender.

(B) The Department of Correction shall ensure that offenders received for incarceration complete the registration form prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908.

(C) The Department of Community Correction shall ensure that offenders placed on probation or another form of community supervision complete the registration form.

(D) The Arkansas State Hospital shall ensure that the registration form is completed for any offender found not guilty by reason of insanity and shall arrange an evaluation by Sex Offender Screening and Risk Assessment.

(E) The Division of Youth Services of the Department of Human Services shall ensure that juveniles ordered by the juvenile court to register complete the registration form.

(2)(A) A sex offender moving to or returning to this state from another jurisdiction shall register with the local law enforcement agency having jurisdiction no later than thirty (30) days after August 1, 1997, or thirty (30) days after the offender establishes residency in a municipality or county of this state, whichever is later.

(B)(i) All persons living in this state who would be required to register as sex offenders in the jurisdiction in which they were adjudicated guilty of a sex offense are required to register as sex offenders in this state whether living, working, or attending school or other training in Arkansas.

(ii) Nonresident workers or students who enter the state for fourteen (14) or more consecutive days to work or study or who enter the state for an aggregate of thirty (30) days or more a year are required to register in compliance with 64 Fed. Reg. 585 2nd as it existed on January 1, 2001.

(C) A sex offender sentenced and required to register outside of Arkansas, whether as an adult or juvenile, must submit to reassessment by Sex Offender Screening and Risk Assessment, provide a DNA sample if a sample is not already accessible to the State Crime Lab, and pay the mandatory fee of two hundred fifty ($250) to the DNA Detection Fund established under §§ 12-12-1101 through 12-12-1120.

(3)(A) After September 1, 1999, a juvenile judge shall require a sex offender to submit at the time of adjudication of a sex offense to an assessment by the Sex Offender Screening and Risk Assessment

(B)(i) The Sex Offender Screening and Risk Assessment shall submit its assessment and recommendation to the juvenile judge and the juvenile judge may order registration by so indicating on the on the proper form.

(ii)(a) Upon the decision by the juvenile judge to order registration by the juvenile, the juvenile shall comply with all the provisions of this subchapter.

(b) The juvenile court judge may order reassessment by Sex Offenders Screening and Risk Assessment any time during the juvenile judge's jurisdiction over the juvenile.

(c) The juvenile court judge may order registration of the juvenile adjudicated delinquent of a sex offense at any time during the juvenile judge's jurisdiction over the juvenile.

(b)(1) The registration file of an offender who is confined in an adult or juvenile correctional facility or serving a commitment following acquittal on the grounds of mental disease or defect shall be inactive until the registration file is updated by the Department of Correction or the Department of Human Services, whichever is responsible for supervision.

(2) Immediately prior to the release of a sex offender or immediately following an escape of his or her abandoning supervision, the Department of Correction or the Department of Human Services shall update the registration file of the sex offender who is to be released or who has escaped or has absconded supervision.

(c)(1)(A) When registering a sex offender as provided in subsection (a) of this section, the Department of Correction, the Department of Community Correction, the Department of Human Services, the sentencing court, or the local law enforcement agency having jurisdiction shall:

(i) Inform the sex offender of the duty to submit to assessment and to register and obtain the information required for registration as described in § 12-12-908;

(ii) Inform the offender that if the offender changes residency, the offender shall give the new address and place of employment, education, or training to the Arkansas Crime Information Center in writing no later than ten (10) days before

the offender establishes residence or is temporarily domiciled at the new address;

(iii)(a) Inform the offender that if the offender changes residency to another state or enters another state for fourteen (14) consecutive days or more or for an aggregate of thirty (30) days or more a year, the offender must also register in that state regardless of permanent residency.

(b) The offender shall register the new address and place of employment, education, or training with the Arkansas Crime Information Center and with a designated law enforcement agency in the new state not later than ten (10) days before the offender establishes residence or is temporarily domiciled in the new state;

(iv)(a) Obtain fingerprints and a photograph of the offender if these have not already been obtained in connection with the offense that triggered registration.

(b) Obtain a deoxyribonucleic acid sample if one has not already been provided;

(v) Require the offender to complete the entire registration process, including, but not limited to, requiring the offender to read and sign a form stating that the duty of the person to register under this subchapter has been explained;

(vi) Inform the offender that if the offender's address changes due to an eviction, natural disaster, or any other unforeseen circumstance, the offender shall give the new address to the Arkansas Crime Information Center in writing no later than five (5) business days after the offender establishes residency; and

(vii) Inform an offender who has been granted probation that failure to comply with the provisions of this subchapter shall be grounds for revocation of the offender's probation.

(B)(i) Any offender required to register as a sex offender must provide a deoxyribonucleic acid sample, i.e., a blood sample or saliva sample, upon registering if a sample has not already been provided to the Arkansas State Crime Laboratory.

(ii) Any offender required to register as a sex offender who is entering the State of Arkansas must provide a deoxyribonucleic acid sample, i.e., a blood sample or saliva sample, upon registration and

must pay the mandatory fee of two hundred fifty dollars ($250) to the DNA Detection Fund established by § 12-12-1119.

(2) When updating the registration file of an offender, the Department of Correction or the Department of Human Services shall:

(A) Review with the offender the duty to register and obtain current information required for registration as described in § 12-12-908;

(B) Review with the offender the requirement that if the offender changes address, the offender shall give the new address to the Arkansas Crime Information Center in writing no later than ten (10) days before the offender establishes residency or is temporarily domiciled at the new address;

(C) Review with the offender the requirement that if the offender changes address to another state, the offender shall register the new address with the Arkansas Crime Information Center and with a designated law enforcement agency in the new state not later than ten (10) days before the offender establishes residence or is temporarily domiciled in the new state, if the new state has a registration requirement;

(D) Require the offender to read and sign a form stating that the duty of the person to register under this subchapter has been reviewed; and

(E) Inform the offender that if the offender's address changes due to an eviction, natural disaster, or any other unforeseen circumstance, the offender shall give the new address to the Arkansas Crime Information Center in writing no later than five (5) business days after the offender establishes residency.

(d) When registering or updating the registration file of a sexually violent predator, the Department of Correction, the Department of Community Correction, the Department of Human Services, or the local law enforcement agency having jurisdiction, in addition to the requirements of subdivision (c)(1) or (2) of this section, shall obtain documentation of any treatment received for the mental abnormality or personality disorder of the sexually violent predator.

(e)(1) An offender required to register pursuant to the provisions of this subchapter shall not change his or her name unless the change is:

(A) Incident to a change in the marital status of the offender; or

(B) Necessary to effect the exercise of religion of the offender.

(2) The change in the offender's name shall be reported to the Director of the Arkansas Crime Information Center within thirty (30) calendar days after the official change in name.

(3) A violation of this subsection shall constitute a Class D felony.

History. Acts 1997, No. 989, § 5; 1999, No. 1353, § 4. 2001, No. 1089, § 1; 2001, No. 1743, § 5.

12-12-907. Report to Arkansas Crime Information Center - Report to law enforcement agency.

(a)(1) Within three (3) days after registering or updating the registration file of an offender, the Department of Correction, the Department of Community Correction, the Department of Human Services, the sentencing court, or the local law enforcement agency having jurisdiction shall report, by written or electronic means, all information obtained from the offender and regarding the offender to the Arkansas Crime Information Center.

(2) The Arkansas Crime Information Center shall immediately enter the information into its record system for maintenance in a central registry and notify the local law enforcement agency having jurisdiction.

(3) The Arkansas Crime Information Center will share information with the National Sex offender Registry.

(b)(1)(A) No later than ten (10) days after release from incarceration or after the date of sentencing, an offender shall report to the local law enforcement agency having jurisdiction and update the information in the registration file.

(B) If the offender is not already registered, the local law enforcement agency having jurisdiction shall register the offender in accordance with this subchapter.

(2) Within three (3) days after registering an offender or receiving updated registry information on an offender, the local law enforcement agency having jurisdiction shall report, by written or electronic means, all information obtained from the offender to the Arkansas Crime Information Center.

(3) The Arkansas Crime Information Center shall verify the address of sexually violent predators on a quarterly basis and the address of all other sex offenders on a semiannual basis.

(4) The Arkansas Crime Information Center shall have access to the offender tracking systems of the Department of Correction and the Department of Community Correction to confirm the location of registrants.

History. Acts 1997, No. 989, § 6; 1999, No. 1353, § 5; 2001, No. 1743, § 6.

12-12-908. Registration format - Requirements.

(a) Within sixty (60) days after August 1, 1997, the Director of the Arkansas Crime Information Center shall prepare the format for registration as required in subsection (b) of this section and shall provide instructions for registration to each organized full-time municipal police department, county sheriff's office, the Department of Correction, the Department of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(b) The registration file required by this subchapter shall include:

(1) The offender's full name and all aliases that the offender has used or under which the offender has been known;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Height;

(6) Weight;

(7) Hair and eye color;

(8) Address of any temporary residence;

(9) Anticipated address of legal residence;

(10) Driver's license number or state identification number, if available;

(11) Social security number;

(12) Place of employment, education, or training;

(13) Photograph, if not already obtained;

(14) Fingerprints, if not already obtained;

(15) Date of arrest, arresting agency, offense for which convicted or acquitted, and arrest tracking number for each adjudication of guilt or acquittal on the grounds of mental disease or defect;

(16) A brief description of the crime or crimes for which registration is required;

(17) The registration status of the offender as a sexually violent predator, aggravated sex offender, or sex offender;

(18) A statement in writing signed by the offender acknowledging that the offender has been advised of the duty to register imposed by this subchapter; and

(19) Any other information that the Arkansas Crime Information Center deems necessary, including, but not limited to:

(A) Criminal and corrections records;

(B) Nonprivileged personnel;

(C) Treatment and abuse registry records; and

(D) Evidentiary genetic markers.

(c) Certain information such as social security number, driver's license number, employer, information that may lead to identification of the victim, and the like may be excluded from the information that is released during the course of notification.

History. Acts 1997, No. 989, § 7; 1999, No. 1353, § 6. 2001, No. 1743, § 7.

12-12-911. Sexual and Child Offenders Registration Fund.

(a) There is hereby established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a fund to be known as the "Sex and Child Offenders Registration Fund".

(b) This fund shall consist of special revenues collected pursuant to § 12-12-910, there to be used by the Arkansas Crime Information Center for the administration of this subchapter.

(c) Any unexpended balance of this fund shall be carried forward and made available for the same purpose.

History. Acts 1997, No. 989, § 10; 1999, No. 1353, § 7.

12-12-913. Disclosure.

(a)(1) Registration records maintained pursuant to this subchapter shall be open to any criminal justice agency in this state, the United States, or any other state.

(2) Registration records may also be open to government agencies authorized by law to conduct confidential background checks.

(b) Local law enforcement agencies having jurisdiction shall disclose, in accordance with guidelines promulgated by the Sex Offenders Assessment Committee, relevant and necessary information regarding offenders to the public when the disclosure of such information is necessary for public protection.

(c)(1)(A) The committee shall promulgate guidelines and procedures for the disclosure of relevant and necessary information regarding offenders to the public when the release of the information is necessary for public protection.

(B) In developing the guidelines and procedures, the committee shall consult with persons who, by experience or training, have a personal interest or professional expertise in law enforcement, crime prevention, victim advocacy, criminology, psychology, parole, public education, and community relations.

(2)(A) The guidelines and procedures shall identify factors relevant to an offender's future dangerousness and likelihood of reoffense or threat to the community.

(B) The guidelines and procedures shall also address the extent of the information to be disclosed and the scope of the community to whom disclosure shall be made as these factors relate to the:

(i) Level of the offender's dangerousness;

(ii) Offender's pattern of offending behavior; and

(iii) Need of community members for information to enhance their individual and collective safety.

(3) The committee shall submit the proposed guidelines and procedures to the House and Senate Committees on Public Health, Welfare and Labor for their review and shall report to the committees every six (6) months on the implementation of this section.

(d)(1) Local law enforcement agencies having jurisdiction that decide to disclose information pursuant to this section shall make a good faith effort to notify the public and residents at least fourteen (14) days before an offender is released or placed into the community.

(2) If a change occurs in an offender's release plan, this notification provision shall not require an extension of the release date.

(3) The Department of Correction and the Department of Human Services shall, in conjunction with the notice provided under § 12-12-914, make available to a local law enforcement agency having jurisdiction all information that the departments have concerning the offender, including information on risk factors in the offender's history.

(e)(1) Local law enforcement agencies having jurisdiction that decide to disclose information under this section shall make a good faith effort to conceal the identity of the victim or victims of the offender's offense.

(2) This information is not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(f) Local enforcement agencies having jurisdiction may continue to disclose information on an offender under this section for as long as the offender is required to be registered under this subchapter.

(g)(1) The State Board of Education shall promulgate guidelines for the disclosure to students and parents of information regarding an offender when such information is released to a local school district by a local law enforcement agency having jurisdiction.

(2) The board of directors of a local school district shall adopt a written policy, in accordance with guidelines promulgated by the state board, regarding the distribution to students and parents of information regarding an offender.

(h) Nothing in this section shall be construed to prevent law enforcement officers from notifying members of the public exposed to danger of any persons that pose a danger under circumstances that are not enumerated in this subchapter.

(i) Nothing in this subchapter shall be interpreted to make medical records or treatment evaluations of the sex or child offender or sexually violent predator subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101. et seq.

History. Acts 1997, No. 989, § 13; 1999, No. 1353, § 8. 2001, No. 1743, § 10.

12-12-914. Notice of release.

(a)(1) The Department of Correction shall provide notice, by written or electronic means to the Arkansas Crime Information Center of the anticipated release from incarceration in a county or state penal institution of a person serving a sentence for a sex offense.

(2) The Department of Human Services shall provide notice by written or electronic means to the Arkansas Crime Information Center of the anticipated release from incarceration of a person committed following an acquittal on the grounds of mental disease or defect for a sexually violent offense, a sex offense, or an offense against a victim who is a minor.

(b)(1)(A) If available, the notice required in subsection (a) of this section shall be provided to the Arkansas Crime Information Center ninety (90) days before the offender's anticipated release.

(B) Provided, however, a good faith effort shall be made to provide the notice at least thirty (30) days before release.

(2) The notice shall include the person's name, identifying factors, offense history, and anticipated future residence.

(c) Upon receipt of notice, the Arkansas Crime Information Center shall provide notice by written or electronic means to:

(1) The local law enforcement agency having jurisdiction; and

(2) Such other state and local law enforcement agencies as appropriate for public safety.

(d)(1) Where possible, victim notification pursuant to this subchapter shall be accomplished by means of the computerized victim notification system established under § 12-12-1201 et seq.

(2) If notification cannot be made throughout the system established under § 12-12-1201 et seq., the Department of Correction shall provide the notification to the victim.

History. Acts 1997, No. 989, § 14; 1999, No. 1353, § 9. 2001, No. 1743, § 11.

12-12-917. Evaluation protocol - Sexually violent predators - Juveniles adjudicated delinquent - Examiners.

(a)(1) The Sex Offenders Assessment Committee shall develop an evaluation protocol for preparing reports to assist courts in making determinations whether or not a person adjudicated guilty of a sex offense should be considered a sexually violent predator for purposes of this subchapter.

(2) The committee shall also establish qualifications for and qualify examiners to prepare reports in accordance with the evaluation protocol.

(b)(1) The committee shall develop an evaluation protocol for preparing reports to assist the juvenile division of circuit court in making determinations whether or not a juvenile adjudicated delinquent of a sex offense should be registered under the provisions of this subchapter.

(2) The committee shall also establish qualifications for examiners to prepare reports in accordance with the evaluation protocol.

History. Acts 1997, No. 989, § 17; 1999, No. 1353, §§ 10, 11. 2001, No. 1743, § 12.

12-12-918. Classification as sexually violent predator - Requirements.

(a)(1) In order to classify a person as a sexually violent predator, a prosecutor shall allege on the face of an information that the prosecutor is seeking a determination that the defendant is a sexually violent predator.

(2)(A) If the defendant is adjudicated guilty, the court shall enter an order directing an examiner qualified by the Sex Offenders Assessment Committee to issue a report to the sentencing court that recommends whether or not the defendant should be classified as a sexually violent predator.

(B) Copies of the report shall be forwarded immediately to the prosecutor and to the defense attorney.

(C) The report shall not be admissible for purposes of sentencing.

(3) After sentencing, the court shall make a determination regarding the defendant's status as a sexually violent predator.

(b)(1) In order for the examiner qualified by the committee to prepare the report:

(A) The defendant shall be sent for evaluation to a facility designated by the Department of Correction; or

(B) Sex Offender Screening and Risk Assessment may elect to send

an examiner to the local or regional detention facility.

(2) The cost of the evaluation shall be paid by the department.

(c)(1) Should evidence be found in the course of any assessment conducted by Sex Offender Screening and Risk Assessment that a sex offender appears to meet the criteria for being classified as a sexually violent predator, the committee shall bring this information to the attention of the prosecutor, who will determine whether a hearing on the matter is warranted.

(2) The sentencing court shall retain jurisdiction to determine whether an offender is a sexually violent predator for one (1) year after sentencing or for so long as the offender remains incarcerated for the sex offense.

(d)(1) The prosecutor's affidavit should state whether or not the offense qualifies as an aggravated sex offense.

(2) Should this statement be omitted, the prosecutor will be contacted by Sex Offender Screening and Risk Assessment and asked to furnish a written determination as to whether or not the offense qualifies as an aggravated sex offense.

History. Acts 1997, No. 989, § 18; 1999, No. 1353, § 12; 2001, No. 1743, § 13.

12-12-919. Termination of obligation to register.

(a) Lifetime registration is required for a sex offender found to have committed an aggravated sex offense, determined by the court to be a sexually violent predator, or found to have been adjudicated guilty of a second or subsequent sex offense under a separate case number, not multiple counts on the same charge.

(b)(1)(A)(i) Any other sex offender required to register under this subchapter may make application for an order terminating the obligation to register to the sentencing court.

(ii) A sex offender sentenced in another state but permanently residing in Arkansas may make an application for an order terminating the obligation to register to the court of the county in which the offender resides.

(B)(i) The court shall hold a hearing on the application at which the applicant and any interested persons may present witnesses and other evidence.

(ii) No fewer than twenty (20) days prior to the date of the hearing on the application, a copy of the application for termination of the obligation to register shall be served on

the prosecutor of the county in which the adjudication of guilt triggering registration was obtained.

(2) The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that:

(A) The applicant, within fifteen (15) years after the person was released from prison or other institution, placed on parole, supervised release, or probation, has not been adjudicated of a sex offense and

(B) The applicant is not likely to pose a threat to the safety of others.

History. Acts 1997, No. 989, § 19; 1999, No. 1353, § 13; 2001, No. 1743, § 14.

12-12-920. Immunity from civil liability.

(a) Public officials, public employees, and public agencies are immune from civil liability for good faith conduct under this subchapter.

(b) Nothing in this subchapter shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith.

(c) The provisions of this section shall also apply to persons or organizations assisting a public official, public employee, or public agency in performing official duties upon a written request to assist them by the public official, public employee, or public agency.

History. Acts 1997, No. 989, § 20; 1999, No. 1353, § 14.

12-12-1001. Definitions.

As used in this subchapter:

(1) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(2) "Central repository" means the Arkansas Crime Information Center, which is authorized to collect, maintain, and disseminate criminal history information;

(3) "Conviction information" means criminal history information disclosing that a person has pleaded guilty or nolo contendere to, or was found guilty of, a criminal offense in a court of law, together with sentencing information;

(4)(A) "Criminal history information" means a record compiled by a central repository or identification bureau on an individual consisting of names and identification data, notations of arrests, detentions, indictments, informations, or other formal criminal charges. This record also includes any dispositions of the charges, as well as notations on correctional supervision and release.

(B) This term does not include fingerprint records on individuals not involved in the criminal justice system, or driver history records;

(5) "Criminal history information system" means the equipment, procedures, agreements, and organizations thereof, for the compilation processing, preservation, and dissemination of criminal history information;

(6) "Criminal justice agency" means a government agency, or any subunit thereof, which is authorized by law to perform the administration of criminal justice, and which allocates more than one-half (1/2) its annual budget to the administration of criminal justice;

(7) "Criminal justice official" means an employee of a criminal justice agency performing the administration of criminal justice;

(8) "Disposition" means information describing the outcome of any criminal charges, including notations that law enforcement officials have elected not to refer the matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed. Dispositions also include acquittals, dismissals, probations, charges pending due to mental disease or defect, guilty pleas, nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender determinations, first offender programs, pardons, commuted sentences, mistrials in which the defendant is discharged, executive clemencies, paroles, releases from correctional supervision, or deaths;

(9) "Dissemination" means disclosing criminal history information or the absence of criminal history information to any person or organization outside the agency possessing the information;

(10) "Expunge" means to restrict access to specific criminal justice purposes as other laws permit;

(11) "Identification Bureau" means the Department of Arkansas State Police Identification Bureau, which is authorized to maintain fingerprint card files and other identification information on individuals;

(12)(A) "Juvenile aftercare and custody information" means information maintained by the Division of Youth Services regarding the status of a juvenile committed to or otherwise placed in the custody of the division from the date of commitment until the juvenile is released from aftercare or custody, whichever is later.

(B) Juvenile aftercare and custody information may include the name, address, and phone number of a contact person or entity responsible for the juvenile;

(13) "Nonconviction information" means arrest information without disposition if an interval of one (1) year has elapsed from the date of arrest and no active prosecution of the charge is pending, as well as all acquittals and all dismissals; and

(14) "Pending information" means criminal history information in some stage of active prosecution or processing.

History. Acts 1993, No. 1109, § 1. 2001, No. 1048, § 1.

12-12-1003. Scope.

(a) This subchapter governs the:

(1) Collection, maintenance, and dissemination of criminal history information on identifiable individuals charged or pleading guilty or nolo contendere, or being found guilty of criminal offenses under the laws of the State of Arkansas.

(2) Dissemination of juvenile aftercare and custody information.

(b) The Arkansas Crime Information Center shall have general authority to issue regulations and implement the provisions of this subchapter.

(c) The reporting requirements of this subchapter apply to law enforcement officials, prosecuting attorneys, judges, and court officials, and probation, correction, and parole officials, within the limits defined in §§ 12-12-1006 and 12-12-1007.

(d) This subchapter does not apply to records of traffic offenses, including misdemeanor offenses of driving while intoxicated, maintained by the Department of Finance and Administration.

(e) Criminal history information collected and maintained by the Arkansas Crime Information Center is not considered public record information within the intent and meaning of the Arkansas Freedom of Information Act, § 25-19-101 et seq.

History. Acts 1993, No. 1109, § 2. 2001, No. 1048, § 2.

12-12-1008. Dissemination for criminal justice purposes.

(a) Pending information, conviction information, and nonconviction information available through the Arkansas Crime Information Center, plus information obtained through the Interstate Identification Index or from another state's record system and juvenile aftercare and custody information, shall be disseminated to criminal justice agencies and officials for the administration of criminal justice.

(b) Criminal justice agencies shall query the Arkansas Crime Information Center to obtain the latest updated information prior to disseminating criminal history information, unless the agency knows that the Arkansas Crime Information Center does not maintain the information or is incapable of responding within the necessary time period.

(c) If a criminal justice agency disseminates criminal history information received from the Arkansas Crime Information Center to another criminal justice agency, the disseminating agency shall maintain, for at least one (1) year, a dissemination log recording the identity of the record subject, the agencies or persons to whom the criminal history information was disseminated, and the date it was provided.

(d) Expunged records will be made available to criminal justice agencies for criminal justice purposes as other laws permit.

History. Acts 1993, No. 1109, § 7.

12-12-1301. Committee created.

(a) There is created the Sex Offenders Assessment Committee, which shall consist of nine (9) members as follows:

(1) The Governor shall appoint, subject to confirmation by the Senate:

(A) One (1) member who is a defense attorney;

(B) One (1) member who is a prosecuting attorney;

(C) Two (2) members who are licensed mental health professionals, at least one (1) of whom shall have a demonstrated expertise in the treatment of sex and child offenders;

(D) One (1) member who is a victims' rights advocate; and

(E) One (1) member who is a law enforcement officer; and

(2) The Director of the Department of Correction or the director's designee; and

(3) The Director of the Department of Community Correction or the director's designee;

(4) The Director of the Arkansas Crime Information Center or the director's designee.

(b)(1) Members appointed by the Governor shall be appointed for four-year staggered terms.

(2) The staggered terms will be assigned by lot.

(c)(1) In the event of a vacancy of one (1) of the members appointed by the Governor for any reason other than expiration of a regular term, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor.

(2) A member of the committee appointed by the Governor may be removed by the Governor for neglect of duty or malfeasance in office.

(3) A member of the committee appointed by the Governor shall not be entitled to compensation for his or her service but may receive expense reimbursement and a stipend not to exceed one hundred ten dollars ($110) per meeting, in accordance with § 25-16-902, to be paid by the Department of Correction.

History. Acts 1999, No. 1353, § 15. 2001, No. 1650, § 5; 2001, No. 1740, § 1.

12-12-1302. Meetings and responsibilities.

(a)(1) The members of the Sex Offenders Assessment Committee shall elect from among their number a chair and a vice chair.

(2) Annually, an organizational meeting shall be held to elect the chair and vice chair.

(3) The Director of the Department of Correction or the director's designee shall serve as the executive secretary.

(4) A majority of the members of the committee shall constitute a quorum for the transaction of business.

(5) A member shall be considered active unless his or her resignation has been submitted or requested by the Governor, or he or she has more than two (2) unexcused absences from meeting in a twelve-month period and this fact has been reported to the Governor's office.

(b)(1) The committee shall meet at least quarterly.

(2) Special meetings may be called by the chair or as provided by the rules of the committee.

(c) The executive secretary of the committee shall keep full and true records of all committee proceedings and preserve all books, documents, and papers relating to the business of the committee.

(d) The meetings shall not be open to the public under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(e) The committee shall assist the Department of Correction in promulgating rules and regulations to ensure the proper implementation of Acts 1999, No. 1353.

(f)(1) The committee shall report in writing to the Governor and to the Legislative Council by July 31 of each year.

(2) The report shall contain:

(A) A summary of the proceedings of the committee during the preceding fiscal year;

(B) A detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the committee;

(C) Other information deemed necessary or useful; and

(D) Any additional information which may be requested by the Governor and the Legislative Council.

History. Acts 1999, No. 1353, § 15. 2001, No. 1740, § 2.

12-12-1303. Assessing public risk.

(a)(1) Sex Offender Screening and Risk Assessment shall assess on a case-by-case basis the public risk posed by a sex or child offender or sexually violent predator who is required to register under § 12-12-905.

(2) Sex Offender Screening and Risk Assessment shall assess those persons required to register under § 12-12-905:

(A) After July 1, 1999; and

(B) Who have not been assessed prior to July 1, 1999; and

(3)(A) Adult offenders sentenced to the Department of Correction shall be assessed as the necessary information becomes available after reception into the Department of Correction, with that assessment being reviewed

and updated periodically during the course of incarceration.

(B) Sex offenders sentenced to life, life without parole, or death shall be assessed only if being considered for release through clemency.

(4) Adult offenders adjudicated guilty but given suspended or probated sentences shall be required by the sentencing court to contact Sex Offender Screening and Risk Assessment at Pine Bluff within ten (10) days of adjudication to schedule an assessment to be conducted at a location determined by the Department of Correction in consultation with the sentencing court.

(5)(A) Sex offenders currently in the community who have not been assessed and classified shall be identified by the Arkansas Crime Information Center.

(B)(i) The Department of Community Correction shall notify offenders in a particular area to present themselves at a parole office in their area or other designated location for assessment by Sex Offender Screening and Risk Assessment.

(ii) Failure to appear or failure to cooperate fully with assessment shall result in a default classification of the highest risk category and in notification of the parole or probation officer, if applicable, and may be considered a violation of the statute requiring registration.

(b)(1) Sex Offender Screening and Risk Assessment shall have access to all relevant records and information in the possession of public agencies or any private entity contracting with a public agency relating to the sex offender or sexually violent predator under review.

(2) The records and information include, but are not limited to:

(A) Police reports;

(B) Statements of probable cause;

(C) Presentence investigations and reports;

(D) Complete judgments and sentences;

(E) Current classification referrals;

(F) Criminal history summaries;

(G) Violation and disciplinary reports;

(H) All psychological evaluations and psychiatric hospital reports;

(I) Sex and child offender or sexually violent predator treatment program reports;

(J) Juvenile records; and

(K) Victim impact statements.

(L) Investigation reports to the child abuse hotline, the Division of Children and Family Services, and any entity contracting with the Department of Human Services for investigation or treatment of sexual or physical abuse or domestic violence; and

(M) Statements of medical providers treating victims of sex offenses indicating the extent of injury to the victim.

(c)(1)(A) Records and information obtained under this section shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise authorized by law.

(B)(i) Records and information obtained under this section shall not be available to the sex offender except through the agency or individual having primary custody of them, unless otherwise ordered by a court of competent jurisdiction.

(ii) The offender may be given a list of the records or information obtained.

(2) The sex offender or sexually violent predator shall have access to records and information generated and maintained by the Sex Offender Screening and Risk Assessment unless the records or information generated contains the addresses of victims or persons who have made statements adverse to the sex offender or sexually violent predator.

(d) In classifying the offender into a risk level for the purposes of public notification under § 12-12-913, Sex Offender Screening and Risk Assessment shall review each sex offender or sexually violent predator under its authority:

(1) Prior to the offender's release from confinement in a correctional facility;

(2) Prior to the release of a person who has been committed following an acquittal on the grounds of mental disease or defect;

(3) Upon an adjudication of delinquency of a sex offense;

(4) At any time during the juvenile court judge's jurisdiction over a juvenile adjudicated delinquent of a sex offense;

(5) At the start of an offender's suspended sentence;

(6) At the start of the offender's term of community punishment; or

(7) At the start of an offender's probation period.

(e)(1) Sex Offender Screening and Risk Assessment shall issue to the local law enforcement agency having jurisdiction, for its use in making public notifications under § 12-12-913, the offender fact sheet required by the regulations promulgated by the Sex Offenders Assessment Committee regarding the sex offender of sexually violent predator.

(2) The Post Prison Transfer Board shall receive copies of the offender fact sheet on inmates of the Department of Correction.

(3) The Department of Community Correction shall receive copies of the offender fact sheet on any individuals under its supervision.

(4)(A)(i) The offender fact sheet shall be reported on standard forms for ease of transmission and communication.

(ii) The offender fact sheet will also be on a computer-based application accessible to law enforcement and state boards and licensing agencies.

(iii) The offender fact sheet of sexually violent predators and those sex offenders found by the Arkansas Crime Information Center to be in violation of registration requirements may be accessible by the general public unless to do so places innocent individuals at risk.

(B) The standard forms shall include, but not be limited to:

(i) Registration information as required in § 12-12-908;

(ii) Risk level;

(iii) Date of deoxyribonucleic acid, or DNA, sample;

(iv) Psychological factors likely to affect sexual control;

(v) Victim target group preference;

(vi) Treatment history and recommendations; and

(vii) Other relevant information deemed necessary by the committee or by professional staff doing sex offender assessments.

(5)(A) Sex Offender Screening and Risk Assessment shall ensure that the notice is completed in its entirety.

(B) Law enforcement shall notify the Arkansas Crime Information Center if an offender has moved or is otherwise in violation of registration requirements.

(6) Copies of relevant documents gathered for the assessment notice may be attached to the notice as determined appropriate by professional staff completing the assessment.

(7)(A) All material used in the assessment will be kept on file in its original form for one (1) year.

(B) After one (1) year, the file may be stored electronically.

(f)(1) The Department of Correction, in cooperation with the committee, shall promulgate rules and regulations to establish the review process for the assessment determinations.

(2) The sex offender may request a review upon presentation of documentation that the law or guidelines were not properly followed or the presentation of information that was not available to Sex Offender Screening and Risk Assessment at the time of the assessment.

(g)(1)(A) A sex offender or sexually violent predator may request the committee to reassess the offender's assigned risk level after five (5) years have elapsed since initial risk assessment by Sex Offender Screening and Risk Assessment and may renew the request once every five (5) years following subsequent denials.

(B) In the request for reassessment, the offender shall list the facts and circumstances which demonstrate that the offender no longer poses the same degree of risk to the community.

(2) The committee shall also take into consideration any subsequent criminal acts by the sex or child offender or sexually violent predator who has requested a reassessment.

History. Acts 1999, No. 1353, § 15. 2001, No. 1740, § 3.

13-2-103. Library computer use - Policy - Signed agreement form required.

(a) The board of directors of each library operated as an entity of the state or any city, county, or other political subdivision of the state with one (1) or more public access computers shall develop, adopt, and implement by August 1, 2001, a written policy that:

(1) Establishes a system to prevent minors from gaining computer access to materials harmful to minors as defined in § 5-68-501;

(2) Provides for suspending the privilege of a minor to use the public access computers if the minor violates the policy and provides for revoking such privilege for repeat offenders; and

(3) Requires all users to sign a computer use agreement form outlining proper and improper use of public access computers prior to their being allowed to access the computer equipment.

(b) For purposes of this section, "public access computer" means a computer that:

(1) Is located in a public school or public library;

(2) Is accessible by a minor; and

(3) Is connected to any computer communication system such as, but not limited to, what is commonly known as the Internet.

History. Acts 2001, No. 912, § 2.

13-2-104. Computer use policy - Definitions - Requirements.

(a) For purposes of this section:

(1) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(A) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

(B) The average person eighteen (18) years of age or older applying comtemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; and

(2) "Public access computer" means a computer that:

(A) Is located in a public school;

(B) Is frequently or regularly used directly by a minor; and

(C) Is connected to any computer communication system.

(b) Each library operated as an entity of the state or any city, county, or other political subdivision of the state with one (1) or more public access computers shall develop, adopt, and implement a written policy that:

(1) Establishes and maintains a system to prevent minors from gaining computer access to materials harmful to minors; and

(2) Provides for suspending the privilege of a minor from using the public access computers for violation of the policy and revoking the privilege for repeat offenders.

(c) Copies of the standards and rules for the enforcement of this section shall be submitted to the Arkansas State Library.

History. Acts 2001, No. 1533, §§ 1, 3.

16-17-133. Limitation of the incarceration of juvenile defendants in municipal courts.

(a)(1) Municipal courts have jurisdiction of juvenile defendants for violation of local codes or ordinances, game and fish violations, and traffic offenses.

(2) Juveniles charged with these offenses are subject to the same penalties as adults unless otherwise provided in this section.

(b) A juvenile subject to the jurisdiction of a municipal court shall not be incarcerated unless the juvenile:

(1) Commits a second offense for which the court has jurisdiction within one (1) year of the first offense;

(2) Willfully violates probation; or

(3) Willfully fails to pay a fine or perform community service work or other sanction properly ordered by the court.

(c) As an alternative to incarceration on a first offense or otherwise, the municipal court may place a juvenile on residential detention, which may be supervised by electronic monitoring for up to thirty (30) days.

(d)(1) For a juvenile to be found in contempt for violating a court order, the order must have been in writing and served on the juvenile and the juvenile's parent or guardian.

(2) If a juvenile is found in contempt of court, the court may:

(A) Order that the juvenile be committed for a period not to exceed ten (10) days; or

(B) Place the juvenile on residential detention, which may be supervised by electronic monitoring for up to thirty (30) days.

(e)(1) Any juvenile incarcerated under this section shall be separated from individuals eighteen (18) years of age or older.

(2) Where space is available, a juvenile who pleads guilty or nolo contendere to, or is found guilty of, an offense under this section may be placed in a juvenile detention facility rather than in the county jail.

(3) Juveniles being detained on allegations of delinquency or who have been adjudicated delinquent shall have priority for juvenile detention beds over juveniles sentenced in municipal court.

(f)(1) A municipal court may also order the juvenile, the juvenile's parent, both parents, or the guardian of any juvenile punishable as provided for in this section to be liable for the cost of the incarceration or electronic monitoring.

(2) Prior to ordering payment, a municipal court shall take into account:

(A) The financial ability of the parent, both parents, or the guardian to pay for the detention or electronic monitoring;

(B) The past efforts of the parent, both parents, or the guardian to correct or prevent the juvenile's misconduct;

(C) If the parent is a noncustodial parent, the opportunity the parent has had to correct the delinquent juvenile's misconduct; and

(D) Any other factors the court deems relevant.

History. Acts 2001, No. 1807, § 1.

16-89-111. Evidence generally.

(a) The state must then offer the evidence in support of the indictment.

(b) The defendant, or his or her counsel, must then offer the defendant's evidence in support of his or her defense.

(c) The parties may then respectively offer rebutting evidence only, unless the court for good reason, in furtherance of justice, permits them to offer evidence upon their original cases.

(d) A confession of a defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the offense was committed.

(e)(1)(A) A conviction or an adjudication of delinquency cannot be had in any case of felony upon the testimony of an accomplice, including in juvenile court, unless corroborated by other evidence tending to connect the defendant or the juvenile with the commission of the offense.

(B) The corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof.

(2) However, in misdemeanor cases, a conviction may be had upon the testimony of an accomplice.

History. Crim. Code, 222-224, 239, 240; Acts 1883, No. 3, 1, p. 2; C. & M. Dig., 3173-3175, 3181, 3182; Pope's Dig., 4009-4011, 4017, 4018; A.S.A. 1947, 43-2112 - 43-2116. Acts 2001, No. 903, § 1.

BANKING

23-32-506. Payment to minor.

If a financial institution is required or permitted to make payment pursuant to this subchapter to a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to Minors Act, § 9-26-201 et seq.

History. Acts 1997, No. 85, § 6.

23-35-502. Shares in name of minor.

(a) Shares may be issued in the name of a minor, if permitted by the articles of incorporation; these shares may be withdrawn by the minor, and payments made on the withdrawals shall be valid.

(b) No minor under sixteen (16) years of age shall be entitled to vote in the meetings of the members either personally or through his parent or guardian, nor may he become a director or committee member until he shall have reached legal age.

History. Acts 1971, No. 132, § 22; A.S.A. 1947, § 67-922.

23-35-503. Shares issued in trust.

(a) Shares may be issued in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless a member in his own right, may be permitted to vote, obtain loans, hold office, or be required to pay an entrance fee.

(b) Payment of part or all of the shares issued in trust to the member shall, to the extent of the payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of the payment.

(c) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written evidence of the existence or terms of any trust, the shares and any dividends or interest thereon shall be paid to the beneficiary.

History. Acts 1971, No. 132, § 23; A.S.A. 1947, § 67-923.

23-37-501. Accounts of minors.

(a) An association and any federal association may accept savings accounts from any minor, as the sole and absolute owner of the savings account, and receive payments thereon by or for the owner, and pay withdrawals, accept pledges to the association, and act in any other manner with respect to the accounts on the order of the minor.

(b) Any payment or delivery of rights to a minor, or a receipt or acquittance signed by a minor shall be a valid and sufficient release and discharge of the association for the payment so made or delivery of rights. The receipt, acquittance, pledge, or other action taken by the minor shall be binding upon the minor with like effect as if he were of full age and legal capacity. However, if either parent or guardian of the minor advises an association in writing that the minor shall not have unrestricted authority to deal with his savings account, during the minority of the minor, the minor shall not be authorized to deal with his savings account except with the joinder of a parent or guardian.

(c) In the event of the death of the minor, the receipt or acquittance of one (1) parent or the guardian of the minor shall be valid and sufficient discharge of the association.

(d) With respect to a minor under twelve (12) years of age, the receipt, acquittance, pledge, or other action required by the association may be taken by one (1) parent or the person standing in loco parentis to the minor.

History. Acts 1963, No. 227, § 37; A.S.A. 1947, § 67-1837.

23-47-202. Deposits by minors.

When any deposit is made in any bank by a minor, the bank may pay to the depositor the sums due him or her and the receipt or check of the minor shall be, in all respects, valid in law.

History. Acts 1997, No. 89, § 1.

23-47-509. Loans to minors.

Whenever a minor borrows money from a bank for the purpose of defraying the expenses of his higher education or for necessaries, any contract, promissory note, loan agreement, or other loan instrument entered into by and between the bank and the minor shall constitute a valid contract between the bank and the minor and shall be binding upon the minor with like effect as if he were of full age and legal capacity.

History. Acts 1997, No. 89, § 1.

23-47-903. Lease to a minor.

A bank may lease a safe-deposit box to a minor and in connection therewith, deal with him to the same effect as if leasing to and dealing with a person of full legal capacity.

History. Acts 1997, No. 89, § 1.

TRANSPORTATION

Drivers' Licenses Generally

27-15-305. Penalties.

(a) Any individual who provides false information in order to acquire or who assists an unqualified person in acquiring the special license plate or the special certificate and any person who abuses the privileges granted by this subchapter shall be deemed guilty of a Class A misdemeanor.

(b)(1) Any vehicle found to be parked in an area designated for the exclusive use of any person with a disability, including the access aisle, as provided in this subchapter, on which is not displayed a special license plate, a special certificate, or an official designation of another state as authorized in this subchapter or which is found to be parked in an area designated for the exclusive use of any person with a disability, if operated by a person who is not a person with a disability while not being used for the actual transporting of a person with a disability shall be subject to impoundment by the appropriate law enforcement agency.

(2) In addition thereto, the owner of the vehicle shall upon conviction be subject to a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for the first offense and not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) for the second and subsequent offenses, plus applicable towing, impoundment, and related fees as well as court costs.

(3)(A) Upon the second or subsequent conviction, the court shall suspend the driver's license for up to six (6) months.

(B) The driver may apply to the Office of Driver Services for a restricted license during the period of suspension. The office shall determine the conditions of the restricted license or may deny the request for a restricted license after reviewing the driving record and circumstances of the driver.

(c) Thirty percent (30%) of every fine and fee collected under this section by a law enforcement agency and court of competent jurisdiction shall be for the purpose of funding activities of the Governor's Commission on People with Disabilities and shall be collected and paid to a special fund established and maintained by the Treasurer of State. Seventy percent (70%) of the funds collected from fines and fees collected under this section shall be paid to the local municipality in which the violation occurred to assist that political subdivision in paying the expenses it incurs in complying with requirements of the Americans with Disabilities Act.

History. Acts 1985, No. 907, § 12; A.S.A. 1947, § 75-296.14; Acts 1987, No. 59, § 5; 1991, No, 656, § 4; 1999, No. 1503, § 2; 2001, No. 609, § 1.

27-16-101. Title.

This chapter may be cited as the "Uniform Motor Vehicle Driver's License Act".

History. Acts 1937, No. 280, 44; Pope's Dig., 6868; Acts 1993, No. 445, § 1. A.S.A. 1947, 75-348.

27-16-102. Construction.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History. Acts 1937, No. 280, 43; Pope's Dig., 6867; A.S.A. 1947, 75-347.

27-16-201. Definitions generally.

As used in this chapter, the following words and phrases defined in this subchapter shall have the meanings respectively ascribed to them, unless the context otherwise requires.

History. Acts 1937, No. 280, 1; Pope's Dig., 6825; A.S.A. 1947, 75-301.

27-16-202. Administration.

(a) "Commissioner" means the Director of the Department of Finance and Administration acting in his capacity as Commissioner of Motor Vehicles of this state.

(b) "Office" means the Office of Driver Services of this state acting directly or through its duly authorized officers and agents.

History. Acts 1937, No. 280, 6; Pope's Dig., 6830; A.S.A. 1947, 75-306.

27-16-203. Nonresident - Resident.

(a) "Nonresident" means every person who is not a resident of this state;

(b)(1) "Resident" shall mean any person who:

(A) Remains in this state for a period of more than ninety (90) days;

(B) Resides in this state due to a change of abode; or

(C) Is domiciled in this state on a temporary or permanent basis.

(2) The term "resident" shall not include any person who is in this state as a student.

History. Acts 1937, No. 280, 4; Pope's Dig., 6828; Acts 1993, No. 445, 40. A.S.A. 1947, 75-304.

27-16-204. Persons.

(a) "Person" means every natural person, firm, copartnership, association, or corporation.

(b) "Driver" means every person who is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(c) "Owner" means a person who holds the legal title of a vehicle or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

History. Acts 1937, No. 280, 3: Pope's Dig., 6827; Acts 1953, No. 85, 1; 1959, No. 307, 5; 1969, No. 300, 1; Acts 1993, No. 445, 2. A.S.A. 1947, 75-303.

27-16-205. Roadways.

"Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part is open to the use of the public, as a matter of right for purposes of vehicular traffic.

History. Acts 1937, No. 280, 5; Pope's Dig., 6829; A.S.A. 1947, 75-305.

27-16-206. Suspension or revocation.

(a) "Suspend" means to temporarily withdraw, by formal action, a driver's license or privilege to operate a motor vehicle on public highways, which shall be for a period specifically designated by the suspending authority.

(b) "Revoke" means to terminate, by formal action, a driver's license or privilege to operate a motor vehicle on the public highways, which shall not be subject to renewal or restoration. However, an application for a new license may be presented and acted upon by the office after the expiration of at least one (1) year after the date of revocation.

History. Acts 1937, No. 280, 3; 1969, No. 300, 1; A.S.A. 1947, 75-303.

27-16-207. Vehicles.

(a) "Vehicle" means every device in, upon, or by which any person or property is, or may be, transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(c) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(d) "School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

History. Acts 1937, No. 280, 2; Pope's Dig., 6826; A.S.A. 1947, 75-302.

27-16-301. Penalty generally.

(a) It is a misdemeanor for any person to violate any of the provisions of this act unless the violation is by this act or other law of this state declared to be a felony.

(b) Unless another penalty is in this act or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of this act shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment of not more than ninety (90) days.

History. Acts 1937, No. 280, 42; Pope's Dig., 6866; Acts 1939, No. 72, 2; 1941, No. 370, 2; A.S.A. 1947, 75-346. Acts 2001, No. 1802, § 1.

27-16-302. Unlawful use of license.

It is a misdemeanor for any person:

(1) To display, or cause or permit to be displayed, or have in his possession any cancelled, revoked, suspended, fictitious, or fraudulently altered driver's license;

(2) To knowingly assist, or permit any other person to apply for or obtain through fraudulent application or other illegal means any Arkansas driver's license;

(3) To lend his driver's license to any other person or knowingly permit its use by another;

(4) To display or represent as one's own any driver's license not issued to him;

(5) To fail or refuse to surrender to the office, upon its lawful demand, any driver's license which has been suspended, revoked, or cancelled;

(6) To use a false or fictitious name in any application for a driver's license, or to knowingly make a false statement, or to knowingly conceal a material fact or otherwise commit a fraud in any application;

(7) To permit any unlawful use of a driver's license issued to him; or

(8) To do any act forbidden or fail to perform any act required by this chapter.

History. Acts 1937, No. 280, 35; Pope's Dig., 6859, Acts 1969, No. 348, 1; Acts 1993, No. 445, 3. A.S.A. 1947, 75-339.

27-16-303. Driving while license cancelled, suspended, or revoked.

(a)(1) Any person whose driver's license or driving privilege as a resident or nonresident has been cancelled, suspended, or revoked as provided in this act and who drives any motor vehicle upon the highways of this state while the license or privilege is cancelled, suspended, or revoked is guilty of a misdemeanor.

(2) Upon conviction, an offender shall be punished by imprisonment for not less than two (2) days nor more than six (6) months, and there may be imposed in addition thereto a fine of not more than five hundred dollars ($500).

(b) The office, upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended, shall extend the period of the suspension for an additional like period and, if the conviction was upon a charge of driving while a license was revoked, the office shall not issue a new license for an additional period of one (1) year from and after the date such person would otherwise have been entitled to apply for a new license.

History. Acts 1937, No. 280, § 37; Pope's Dig., § 6861; Acts 1959, No. 307, § 17; A.S.A. 1947, § 75-341; Acts 1993, No. 445, § 4; 1999, No. 1018, § 1.

27-16-304. Permitting unauthorized person to drive.

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under this chapter or is in violation of any of the provisions of this chapter.

History. Acts 1937, No. 280, 39; Pope's Dig., 6863; A.S.A. 1947, 75-343.

27-16-305. Permitting minor to drive.

No person shall cause or knowingly permit his child or ward under the age of eighteen (18) years to drive a motor vehicle upon any highway when the minor is not authorized under this chapter or is in violation of any of the provisions of this chapter.

History. Acts 1937, No. 280, 38; Pope's Dig., 6862; Acts 1955, No. 278, 1; A.S.A. 1947, 75-342.

27-16-306. Perjury.

(a) Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed, is guilty of perjury.

(b) Upon conviction, an offender shall be punishable by fine or imprisonment as other persons committing perjury are punishable.

History. Acts 1937, No. 280, 36; Pope's Dig., 6860; A.S.A. 1947, 75-340.

27-16-401. Definitions. [Effective until July 1, 2002.]

As used in this subchapter, unless the context otherwise requires:

(1) "Commissioner" means the Director of the Department of Finance and Administration of the State of Arkansas acting in his capacity as Commissioner of the Office of Motor Vehicle of this state;

(2) "Director" means the Director of the Office of Driver Services Division;

(3) "Driver" means the same as provided in 27-16-204(b).

History. Acts 1965, No. 555, 1; Acts 1993, No. 445, 5. A.S.A. 1947, 75-353.

27-16-401. Definitions. [Effective July 1, 2002.]

As used in this subchapter, unless the context otherwise requires:

(1) "Commissioner" means the Director of the Department of Finance and Administration of the State of Arkansas acting in his capacity as Commissioner of the Office of Motor Vehicle of this state;

(2) "Director" means the Director of the Office of Driver Services Division;

(3) "Driver" means the same as provided in § 27-16-204(b).

(4)(A) "Serious accident" means a reportable accident in which the driver is found at fault; and

(B) The accident is placed on the driver's record by the Office of Driver Services; and

(5) "Serious traffic violation" means any violation where the driver's privilege to operate a motor vehicle has, by court order or by administrative action, been withdrawn or any violation in which a driver has been found guilty of:

(A) Any alcohol-related moving traffic violation;

(B) Any seat belt violation;

(C) Any commercial motor vehicle violation;

(D) Driving fifteen (15) or more miles per hour over the speed limit;

(E) Reckless driving;

(F) Negligent homicide;

(G) Using a vehicle to commit a felony;

(H) Failure to carry liability insurance;

(I) Leaving the scene of an accident;

(J) Evading arrest;

(K) Fleeing by use of an automobile;

(L) Unsafe driving;

(M) Hazardous driving;

(N) Prohibited passing;

(O) Passing stopped school bus;

(P) Careless or negligent driving;

(Q) Failure to obey a traffic signal or device;

(R) Failure to obey a railroad crossing barrier;

(S) Racing on a highway;

(T) Driving with a suspended, revoked, or cancelled license; or

(U) Driving the wrong way down a one-way street.

History. Acts 1965, No. 555, 1; Acts 1993, No. 445, 5. A.S.A. 1947, 75-353. Acts 2001, No. 1694, § 10.

27-16-402. Creation.

(a) There is established within the Department of Finance and Administration a separate office to be known as the Office of Driver Services which shall, acting under the direction and supervision of the commissioner, administer the provisions of this chapter and the other laws of this state regarding the licensing of motor vehicle drivers and the laws relating to the suspension and revocation of their licenses.

(b) The commissioner shall, upon approval of the Governor, appoint a director of the office, and the director shall, acting under the supervision of the commissioner, serve as the principal administrative officer of the office.

History. Acts 1965, No. 555, 2; Acts 1993, No. 445, 6. A.S.A. 1947, 75-354.

27-16-501. Records to be kept.

(a) The office shall file every application for a license received by it and shall maintain suitable indices containing:

(1) All applications denied and on each note the reasons for such denial;

(2) All applications granted; and

(3) The name of every licensee whose license has been suspended Or revoked by the office and, after each name, note the reasons for such action.

(b) The office shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and, in connection therewith, maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of the licensee and the traffic accidents in which he has been involved may be readily ascertainable and available for the consideration of the office upon any application for renewal of license at other suitable times.

History. Acts 1937, No. 280, 24; Pope's Dig., 6848; Acts 1969, No. 110, 1; A.S.A. 1947, 75-328.

27-16-502. Reporting of convictions and forwarding of licenses by courts.

(a) Whenever any person is convicted of any offense for which this chapter makes mandatory the revocation of the driver's license of the person by the office, the court in which the conviction is obtained shall require the surrender to it of all driver's licenses then held by the person so convicted and the court shall forward the licenses together with a record of the conviction to the office.

(b) Every court having jurisdiction over offenses committed under this chapter or any other law of this state regulating the operation of motor vehicles on highways shall forward to the office a record of the conviction of any person in the court for a violation

of any laws and may recommend the suspension of the driver's license of the person so convicted.

(c)(1) For the purposes of this section, the term "conviction" shall mean a final conviction.

(2) For the purposes of this section, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which has not been vacated, shall be equivalent to a conviction.

History. Acts 1937, No. 280, 28; Pope's Dig., 6852; Acts 1993, No. 445, 8. A.S.A. 1947, 75-332.

27-16-504. Record of nonresident's conviction.

The office is authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of the record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

History. Acts 1937, No. 280, 26; Pope's Dig., 6850; A.S.A. 1947, 75-330.

27-16-505. Notification of incompetency.

When any person is declared incompetent by reason other than minority in any county in the State of Arkansas, the probate clerk shall promptly notify the office on such forms as the office shall prescribe:

(1) The date the person was declared incompetent;

(2) The address of the incompetent;

(3) The person or institution having custody of the incompetent; and

(4) The name of the guardian.

History. Acts 1967, No. 205, 1; A.S.A. 1947, 75-357.

27-16-506. Notice of change of address or name.

(a) Whenever any person after applying for or receiving a driver's license shall move from the address named in such application or in the license issued to him or when the name of a licensee is changed by marriage or otherwise, such person shall within ten (10) days thereafter notify the Office of Driver Services in writing of his old and new addresses or of his former and new names and of the number of any license then held by him.

(b) No change of name shall be on a driver's license unless the application for the change is accompanied by a recorded marriage license, a court order, or a divorce decree changing the driver's name.

History. Acts 1937, No. 280, § 23; Pope's Dig., § 6847; A.S.A. 1947, § 75-327; Acts 1993, No. 445, § 9; 1999, No. 1077, § 2.

27-16-507. Registration with selective service. [Effective January 1, 2002.]

(a)(1) Any United States male citizen or immigrant who is at least eighteen (18) years of age but less than twenty-six (26) years of age shall be registered for the United States Selective Service System when applying to the Department of Finance and Administration for the issuance, renewal, or a duplicate copy of:

(A) A driver's license;

(B) A commercial driver's license; or

(C) An identification card.

(2) This registration is in compliance with the requirements of section 3 of the Military Selective Service Act, 50 U.S.C. Appx. 451 et seq.

(b) The department shall forward to the Selective Service System in an electronic format the necessary personal information required for registration of the applicants identified in this section.

(c) The applicant's submission of the application shall serve as an indication that the applicant has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration.

(d) The department shall notify the applicant on the receipt that his submission of the application for a license or identification card identified in this section will serve as his consent to be registered with the Selective Service System, if so required by federal law.

(e) The department shall attempt to enter into an agreement with the Selective Service System to share the cost and data necessary to implement this section.

History. Acts 2001, No. 78, § 1.

27-16-601. License to be carried and exhibited on demand.

(a) Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the license upon demand of a justice of the peace, a peace officer, or an employee of the office.

(b) No person charged with violating this section shall be convicted if he produces in court a driver's license issued to him and valid at the time of his arrest.

History. Acts 1937, No. 280, 19; Pope's Dig., 6843; Acts 1993, No. 445, 10. A.S.A. 1947, 75-323.

27-16-602. Driver's license required.

(a) No person, except those expressly exempted, shall drive any motor vehicle upon a highway in this state unless the person has a valid driver's license under the provisions of this chapter.

(b)(1) No person shall receive a driver's license unless and until he surrenders to the office all valid driver's licenses in his possession issued to him by any other jurisdiction.

(2) All surrendered licenses shall be returned by the office to the issuing department together with information that the licensee is now licensed in the new jurisdiction.

(3) No person shall be permitted to have more than one (1) valid driver's license at any time.

(c)(1) No person shall drive a commercial motor vehicle as a commercial driver unless he holds a valid commercial driver's license.

(2) No person shall receive a commercial driver's license unless and until he surrenders to the office any noncommercial driver's license issued to him or an affidavit that he does not possess a noncommercial driver's license.

(3) Any person holding a valid commercial driver's license under this chapter need not procure a noncommercial driver's license.

(d) Any person licensed under this chapter may exercise the privilege granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise the privilege by any county, municipal, or local board or body having authority to adopt local police regulations.

History. Acts 1937, No. 280, 7; Pope's Dig., 6831; Acts 1959, No. 307, 12; Acts 1993, No. 445, 11. A.S.A. 1947, 75-307.

27-16-603. Persons exempted from licensing.

The following persons are exempt from licensing under this chapter:

(1) Any person while operating a motor vehicle in the service of the Army, Air Force, Navy, or Marine Corps of the United States;

(2) Any person while operating or driving any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;

(3) A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid noncommercial driver's license issued to him in his home state or country may operate a motor vehicle in this state only as a noncommercial driver;

(4) A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid commercial driver's license issued to him by his home state or country may operate a motor vehicle in this state either as a commercial or a noncommercial driver; and

(5) Any nonresident who is at least eighteen (18) years of age whose home state or country does not require the licensing of noncommercial drivers may operate a motor vehicle as a noncommercial driver only, for a period of not more than ninety (90) days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of the nonresident.

History. Acts 1937, No. 280, 8; Pope's Dig., 6832; Acts 1981, No. 852, 1; Acts 1993, No. 445, 12. A.S.A. 1947, 75-308.

27-16-604. Persons not to be licensed. [Effective until July 1, 2002.]

(a) The Office of Driver Services shall not issue any license under this act to any person:

(1) As a noncommercial driver who is under sixteen (16) years of age, except that the office may issue a restricted license as provided to any person who is at least fourteen (14) years of age;

(2) As a commercial driver who is under eighteen (18) years of age;

(3) As a commercial or noncommercial driver whose:

(A) License to operate a motor vehicle has been suspended, in whole or in part, by this state or by any other state, during the suspension; or

(B) License has been revoked, in whole or in part, by this state or by any other state, until the expiration of one (1) year after the license was revoked;

(4) As a commercial or noncommercial driver who is a habitual drunkard, a habitual user of narcotic drugs, or a habitual user of any other drug to a degree which renders him or her incapable of safely driving a motor vehicle;

(5) As a commercial or noncommercial driver who has previously been adjudged to have any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(6) As a commercial or noncommercial driver who is required by this act to take an examination, unless the person shall have successfully passed the examination;

(7) Who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

(8) Who is receiving any type of welfare, tax, or other benefit or exemption as a blind or nearly blind person, if the correctable vision of the person is less than 2%o in the better eye or if the total visual field of the person is less than one hundred five degrees (1050);

(9) Whose operation of a motor vehicle on the highways the Commissioner of Motor Vehicles has good cause to believe would be inimical to public safety or welfare;

(10) Who is making an initial application for an Arkansas driver's license and who is not lawfully within the United States;

(11) Who is a noncommercial driver between sixteen (16) and eighteen (18) years of age who has not possessed a restricted license for at least six (6) months;

(12) Who is making an initial application for an Arkansas driver's license and cannot provide one (1) of the following documents:

(A) United States birth certificate;

(B) United States visa;

(C) Social Security card;

(D) Photo document from the Immigration and Naturalization Service;

(E) Military or military dependent photograph identification;

(F) United States passport;

(G) Naturalization certificate; or

(H) Any other document prescribed by the Department of Finance and Administration; or

(13) Who is seeking an initial application or renewal of an Arkansas driver's license or photo identification and cannot show either an Arkansas driver's license or identification,

two (2) primary documents, or one (1) primary and one (1) secondary document prescribed by the department and updated as needed.

(b) The office is authorized to secure from all state agencies involved the necessary information to comply with the provisions of this section.

(c) The department shall promulgate a list of documents acceptable under § 27-16-604 (a)(12) or (13) and post the list in each revenue office in the state.

History. Acts 1937, No. 280, § 9; Pope's Dig., § 6833; Acts 1959, No. 307, § 13; 1967, No. 339, § 1; 1969, No. 142, § 7; A.S.A. 1947, § 75-309; Acts 1989, No. 193, § 1; 1993, No. 445, § 13; 1997, No. 208, § 33; 1997, No. 1099, § 1; 1999, No. 25, § 1; 2001, No. 1812, §§ 2, 3.

27-16-604. Persons not to be licensed. [Effective July 1, 2002.]

(a) The Office of Driver Services shall not issue any license under this act to any person:

(1) As a noncommercial driver who is under eighteen (18) years of age, except that the office may issue an intermediate license as provided to any person who is at least sixteen (16) years of age and a learner's permit license to any person who is at least fourteen (14) years of age. This age restriction does not apply to a person who is at least sixteen (16) years of age and:

(A) Married;

(B) Possesses a high school diploma;

(C) Has successfully completed a General Educational Development test; or

(C) Is enlisted in the United States military;

(2) As a commercial driver who is under eighteen (18) years of age;

(3) As a commercial or noncommercial driver whose:

(A) License to operate a motor vehicle has been suspended, in whole or in part, by this state or by any other state, during the suspension;

(B) License has been revoked, in whole or in part, by this state or by any other state, until the expiration of one (1) year after the license was revoked;

(4) As a commercial or noncommercial driver who is a habitual drunkard, a habitual user of narcotic drugs, or a habitual user of any other drug to a degree which renders him or her incapable of safely driving a motor vehicle;

(5) As a commercial or noncommercial driver who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(6) As a commercial or noncommercial driver who is required by this act to take an examination, unless the person shall have successfully passed the examination;

(7) Who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

(8) Who is receiving any type of welfare, tax, or other benefit or exemption as a blind or nearly blind person, if the correctable vision of the person is less than 2%o in the better eye or if the total visual field of the person is less than one hundred five degrees (1050);

(9) Whose operation of a motor vehicle on the highways the Commissioner of Motor Vehicles has good cause to believe would be inimical to public safety or welfare;

(10) Who is making an initial application for an Arkansas driver's license and who is not lawfully within the United States;

(11) Who is a noncommercial driver between sixteen (16) and eighteen (18) years of age who has not possessed a restricted license for at least six (6) months;

(12) Who is making an initial application for an Arkansas driver's license and cannot provide one (1) of the following documents:

(A) United States birth certificate;

(B) United States visa;

(C) Social Security card;

(D) Photo document from the Immigration and Naturalization Service;

(E) Military or military dependent photograph identification;

(F) United States passport;

(G) Naturalization certificate; or

(H) Any other document prescribed by the Department of Finance and Administration; or

(13) Who is seeking an initial application or renewal of an Arkansas driver's license or photo identification and cannot show either an Arkansas driver's license or identification,

two (2) primary documents, or one (1) primary and one (1) secondary document prescribed by the department and updated as needed.

(b) The office is authorized to secure from all state agencies involved the necessary information to comply with the provisions of this section.

(c) The department shall promulgate a list of documents acceptable under § 27-16-604 (a)(12) or (13) and post the list in each revenue office in the state.

History. Acts 1937, No. 280, § 9; Pope's Dig., § 6833; Acts 1959, No. 307, § 13; 1967, No. 339, § 1; 1969, No. 142, § 7; A.S.A. 1947, § 75-309; Acts 1989, No. 193, § 1; 1993, No. 445, § 13; 1997, No. 208, § 33; 1997, No. 1099, § 1; 1999, No. 25, § 1; 2001, No. 1694, § 1; 2001, No. 1812, §§ 2, 3.

27-16-605. Duties of person renting motor vehicle to another.

(a) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed under this chapter or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence, except a nonresident whose home state or country does not require that a driver be licensed.

(b) No person shall rent a motor vehicle to another until he has inspected the commercial or noncommercial driver's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of the person written in his presence.

(c)(1) Every person renting a motor vehicle to another shall keep a record of.

(A) The registration number of the motor vehicle so rented;

(B) The name and address of the person to whom the vehicle is rented;

(C) The number of the license of the person; and

(D) The date and place when and where the license was issued.

(2) This record shall be open to inspection by any police officer or officer or employee of the office.

History. Acts 1937, No. 280, 41; Pope's Dig., 6865; Acts 1993, No. 445, 14. A.S.A. 1947, 75-345.

27-16-606. When residents and nonresidents to obtain state registration and license.

(a) Within thirty (30) calendar days of becoming a resident, any person who is a resident of this state shall obtain an Arkansas driver's license in order to drive upon the streets and highways of this state.

(b) Any nonresident who has been physically present in this state for a period of six (6) months shall obtain an Arkansas driver's license in order to drive upon the streets and highways of this state.

History. Acts 1993, No. 445, § 43; 1999, No. 912, § 3.

27-16-701. Application for license or instruction permit - Restricted permits. [Effective until July 1, 2002.]

(a) Every application for an instruction permit or for a commercial or noncommercial driver's license shall be made upon a form furnished by the Office of Driver Services, and every application shall be accompanied by the required fee.

(b) Every application shall:

(1) State the full name, date of birth, sex, and residence address of the applicant;

(2) Briefly describe the applicant; and

(3) State whether the applicant has theretofore been licensed as a driver and, if so, when and by what state or country, whether any license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(c)(1) Every application form for an instruction permit, for a commercial or noncommercial driver's license, or for any renewal of these licenses or permits shall include space for the applicant's social security number if he has been assigned a number.

(2) Every applicant shall supply his social security number on the application form when he has been assigned a number, except that an applicant for an instruction permit for a noncommercial driver's license shall not be required to supply his or her social security number and may choose whether to use his or her social security number on the application.

(d) Every application for an instruction permit or for a driver's license by a person less than eighteen (18) years of age on October 1 of any year shall be accompanied by:

(1)(A) Proof of receipt of a high school diploma or its equivalent or enrollment and regular attendance in an adult education program or a public, private, or parochial school.

(i)(a) In order to be issued a license, a student enrolled in school shall present proof of a "C" average for the previous semester or similar equivalent grading period for which grades are recorded as part of the student's permanent record.

(b) However, when the student does not have the required "C" average, a restricted license may be issued to the student for the purpose of driving to and from work.

(ii) A student with disabilities receiving special education or related services or a student enrolled in an adult education program shall present proof that the student is successfully completing his or her individual education plan in order to be issued a license.

(B) "Regular attendance" in a school shall be attendance in compliance with the established written policy of the school district or school concerning truancy.

(C) "Regular attendance" in an adult education program shall be attendance in compliance with the policy for sixteen-year-olds and seventeen-year-olds established by the State Board of Workforce Education and Career Opportunities as provided for in § 6-18-222;

(2) Proof that the person is being provided schooling at home as described in § 6-15-501 et seq. in the form of a notarized copy of the written notice of intent to home school the student provided by the parent or guardian to the superintendent of the local school district as required by § 6-15-503; or

(3) Proof that the person is enrolled in a postsecondary vocational-technical program, a community college, or a two-year or four-year institution of higher education.

(e) The Department of Education shall develop guidelines for use by school districts to provide a certified exemption from the "C" average requirement of subdivision (d)(1)(A)(i) of this section to a student found to be performing at his or her fullest level of capability although that may be below a "C" average.

(f) (1) Any person less than eighteen (18) years old who is unable to meet the requirements of subsection (d) of this section may petition the office that he or she be issued a restricted permit for employment-related purposes.

(2)(A) The office shall advise the person of the time and place for making the request and for the hearing thereon, which shall be conducted within a reasonable time following the application date.

(B) Notice shall be given by mailing the notice to the last known address of the person seeking the restricted permit.

(3)(A) In cases where demonstrable financial hardship would result from the failure to issue a learner's permit or driver's license, the Department of Finance and Administration may grant exceptions only to the extent necessary to ameliorate the hardship.

(B) If it can be demonstrated that the conditions for granting a hardship were fraudulent, the parent, guardian, or person in loco parentis shall be subject to all applicable perjury statutes.

(g) The department shall have the power to promulgate rules and regulations to carry out the intent of this section and shall distribute to each public, private, and parochial school and each adult education program a copy of all rules and regulations adopted under this section.

History. Acts 1937, No. 280, § 12; Pope's Dig., § 6836; Acts 1969, No. 302, § 1; A.S.A. 1947, § 75-311; Acts 1987, No. 274, § 1; 1989, No. 8, § 1; 1991, No. 716, § 1; 1991, No. 831, § 1; 1993, No. 971, § 1; 1993, No. 445, § 15; 1994 (2nd Ex. Sess.), No. 30, § 3; 1994 (2nd Ex. Sess.), 31, § 3; 1997, No. 400, § 7; 1997, No. 1200, § 1; 2001, No. 1609, § 1.

27-16-701. Application for license or instruction permit - Restricted permits. [Effective July 1, 2002.]

(a)(1) Every application for an instruction permit or for a commercial or noncommercial driver's license shall be made upon a form furnished by the Office of Driver Services, and every application shall be accompanied by the required fee.

(2) The driver's license or noncommercial driver's license shall include the intermediate driver's license issued to persons who are less than eighteen (18) years of age and the learner's license issued to persons who are less than sixteen (16) years of age.

(b) Every application shall:

(1) State the full name, date of birth, sex, and residence address of the applicant;

(2) Briefly describe the applicant; and

(3) State whether the applicant has theretofore been licensed as a driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(c)(1) Every application form for an instruction permit, a commercial or noncommercial driver's license, or any renewal of these licenses or permits shall include space for the applicant's social security number if he or she has been assigned such a number.

(2) Every applicant shall supply his or her social security number on the application form when he or she has been assigned such a number, except that an applicant for an instruction permit for a noncommercial driver's license shall not be required to supply his or her social security number and may choose whether to use his or her social security number on the application.

(d) Every application for an instruction permit or for a driver's license by a person less than eighteen (18) years of age on October 1 of any year shall be accompanied by:

(1)(A) Proof of receipt of a high school diploma or its equivalent or enrollment and regular attendance in an adult education program or a public, private, or parochial school.

(i)(a) In order to be issued a license, a student enrolled in school shall present proof of a "C" average for the previous semester or similar equivalent grading period for which grades are recorded as part of the student's permanent record.

(b) However, when the student does not have the required "C" average, a restricted license may be issued to the student for the purpose of driving to and from work.

(ii) A student with disabilities receiving special education or related services or a student enrolled in an adult education program shall present proof that the student is successfully completing his or her individual education plan in order to be issued a license.

(B) "Regular attendance" in a school shall be attendance in compliance with the established written policy of the school district or school concerning truancy.

(C) "Regular attendance" in an adult education program shall be attendance in compliance with the policy for sixteen-year-olds and seventeen-year-olds established by the State Board of Workforce Education and Career Opportunities as provided for in § 6-18-222;

(2) Proof that the person is being provided schooling at home as described in § 6-15-501 et seq. in the form of a notarized copy of the written notice of intent to home school the student provided by the parent or guardian to the superintendent of the local school district as required by § 6-15-503;

(3) Proof that the person is enrolled in a postsecondary vocational-technical program, a community college, or a two-year or four-year institution of higher education;

(4) A check of the applicant's driving record to verify that the applicant for a learner's license or an intermediate driver's license has been free of a serious accident and conviction of a serious traffic violation for the last six (6) months and that an applicant with an intermediate driver's license applying for a regular license has been free of a serious accident and conviction of a serious traffic violation for the last twelve (12) months;

(5) An acknowledgement signed by the applicant for a learner's license that the student is aware that all passengers riding in the motor vehicle shall wear seat belts at all times and that the student is restricted to driving only when accompanied by a driver over twenty-one (21) years of age; and

(6) An acknowledgement signed by the applicant for an intermediate license that all passengers riding in the motor vehicle shall wear seat belts at all times.

(e) The Department of Education shall develop guidelines for use by school districts to provide a certified exemption from the "C" average requirement of subdivision (d)(1)(A)(i) of this section to a student found to be performing at his or her fullest level of capability although this level may be below a "C" average.

(f)(1) Any person less than eighteen (18) years of age who is unable to meet the requirements of subdivisions (d)(1)-(3) of this section may petition the office that he or she be issued a restricted permit for employment-related purposes.

(2)(A) The office shall advise the person of the time and place for making the request and for the hearing thereon, which shall be conducted within a reasonable time following the application date.

(B) The notice shall be given by mailing the notice to the last known address of the person seeking the restricted permit.

(3)(A) In cases where demonstrable financial hardship would result from the failure to issue a learner's permit or driver's license, the Department of Finance and Administration may grant exceptions only to the extent necessary to ameliorate the hardship.

(B) If it can be demonstrated that the conditions for granting a hardship were fraudulent, the parent, guardian, or person in loco parentis shall be subject to all applicable perjury statutes.

(g) The department shall have the power to promulgate rules and regulations to carry out the intent of this section and shall distribute to each public, private, and parochial school and each adult education program a copy of all rules and regulations adopted under this section.

History. Acts 1937, No. 280, § 12; Pope's Dig., § 6836; Acts 1969, No. 302, § 1; A.S.A. 1947, § 75-311; Acts 1987, No. 274, § 1; 1989, No. 8, § 1; 1991, No. 716, § 1; 1991, No. 831, § 1; 1993, No. 971, § 1; 1993, No. 445, § 15; 1994 (2nd Ex. Sess.), No. 30, § 3; 1994 (2nd Ex. Sess.), No. 31, § 3; 1997, No. 400, § 7; 1997, No. 1200, § 1; 2001, No. 1609, § 1; 2001, No. 1694, § 2.

27-16-702. Application of minor for instruction permit or driver's license, etc. [Effective until July 1, 2002.]

(a)(1)(A) The original application of any person under the age of eighteen (18) years for an instruction permit, driver's license, or motor-driven cycle or motorcycle license shall be signed and verified before a person authorized to administer oaths by either the father or mother of the applicant, if either is living and has custody.

(B) In the event neither parent is living or has custody, then the application shall be signed by the person or guardian having custody or by an employer of the minor.

(C) In the event there is no guardian or employer, then the application shall be signed by any other responsible person who is willing to assume the obligations imposed under this subchapter upon a person signing the application of a minor.

(2) For purposes of this section, duly authorized agents of the commissioner shall be authorized to administer oaths without charge.

(b) Any negligence or willful misconduct of a minor under the age of eighteen (18) years when driving a motor vehicle upon a highway shall be imputed to the person who signed the application of the minor for a permit or license, regardless of whether the person who signed was authorized to sign under subsection (a) of this section, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct.

(c)(1) If any person who is required or authorized by subsection (a) of this section to sign the application of a minor in the manner therein provided shall cause, or knowingly cause, or permit his child or ward or employee under the age of eighteen (18) years to drive a motor vehicle upon any highway, then any negligence or willful misconduct of the minor shall be imputed to this person, and this person shall be jointly and severally liable with the minor for any damages caused by such negligence or willful misconduct.

(2) The provisions of this subsection shall apply regardless of the fact that a driver's license may or may not have been issued to the minor.

(3) For purposes of this section, a "minor "is defined to be any person who has not attained the age of eighteen (18) years.

(d) The provisions of this section shall apply in all civil actions, including, but not limited to, both actions on behalf of and actions against the persons required or authorized by subsection (a) of this section to sign the application in the manner therein provided.

History. Acts 1937, No. 280, § 13; Pope's Dig., § 6837; Acts 1961, No. 495, § 1; 1969, No. 302, § 2; A.S.A. 1947, § 75-315; Acts 1987, No. 409, § 1; 1993, No. 445, § 16; 1995, No. 959, §§ 3-5.

27-16-702. Application of minor for instruction permit, learner's license, or intermediate driver's license. [Effective July 1, 2002.]

(a)(1)(A) The original application of any person under eighteen (18) years of age for an instruction permit, a learner's license, an intermediate driver's license, or a motor-driven cycle or motorcycle license shall be signed and verified before a person authorized to administer oaths by either the father or mother of the applicant, if either is living and has custody.

(B) In the event that neither parent is living or has custody, then the application shall be signed by the person or guardian having custody or by an employer of the minor.

(C) In the event that there is no guardian or employer, then the application shall be signed by any other responsible person who is willing to assume the obligations imposed under this subchapter upon a person signing the application of a minor.

(2) For purposes of this section, duly authorized agents of the Commissioner of Motor Vehicles shall be authorized to administer oaths without charge.

(b) Any negligence or willful misconduct of a minor under eighteen (18) years of age when driving a motor vehicle upon a highway shall be imputed to the person who signed the application of the minor for a permit or license, regardless of whether the person who signed was authorized to sign under subsection (a) of this section, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct.

(c)(1) If any person who is required or authorized by subsection (a) of this section to sign the application of a minor in the manner therein provided shall cause, or knowingly cause, or permit his or her child or ward or employee under eighteen (18) years of age to drive a motor vehicle upon any highway, then any negligence or willful misconduct of the minor shall be imputed to this person, and this person shall be jointly and severally liable with the minor for any damages caused by such negligence or willful misconduct.

(2) The provisions of this subsection shall apply regardless of the fact that a learner's license or an intermediate driver's license may or may not have been issued to the minor.

(3) For purposes of this section, a "minor" is defined to be any person who has not attained eighteen (18) years of age.

(d) The provisions of this section shall apply in all civil actions, including, but not limited to, both actions on behalf of and actions against the persons required or authorized by subsection (a) of this section to sign the application in the manner therein provided.

History. Acts 1937, No. 280, § 13; Pope's Dig., § 6837; Acts 1961, No. 495, § 1; 1969, No. 302, § 2; A.S.A. 1947, § 75-315; Acts 1987, No. 409, § 1; 1993, No. 445, § 16; 1995, No. 959, §§ 3-5; 2001, No. 1694, § 3.

27-16-703. Release from liability.

(a) Any person who has signed the application of a minor for a license may thereafter file with the office a verified written request that the license of the minor so granted be cancelled.

(b) The office shall cancel the license of the minor and the person who signed the application of the minor shall be relieved from the liability imposed under this chapter by reason of having signed the application on account of any subsequent negligence or willful misconduct of the minor in operating a motor vehicle.

History. Acts 1937, No. 280, 14; Pope's Dig., 6838; A.S.A. 1947, 75-316.

27-16-704. Examinations of applicants. [Effective until July 1, 2002.]

(a) Every applicant for a driver's license, except as otherwise provided in this chapter, shall be examined in accordance with the provisions of this section.

(b)(1) The examination shall be held in the county where the applicant resides within not more than thirty (30) days from the date application is made.

(2) The examination shall include a test of the applicant's eyesight, ability to read and understand highway traffic laws of this state, and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and such further physical and mental examination, deemed necessary by the office, to operate a motor vehicle safely upon the highways.

(3) The test of the applicant's eyesight shall examine their visual acuity to read road signs and identify objects at a distance.

(4) The applicant shall have a minimum uncorrected visual acuity of 20/40 for an unrestricted license and a minimum corrected visual acuity of 20/50 for a restricted license. The applicant's field of vision shall be at least one hundred forty degrees (140 degrees) for a person with two (2) functional eyes and at least one hundred five degrees (105 degrees) for a person with one (1) functional eye.

(5) Applicants who fail the eyesight test shall be instructed that they should have their eyes examined by an eye care professional and secure corrective lenses, if necessary.

(6) The test of the applicant's eyesight shall be made on an optical testing instrument approved under standards established by the Director of the Department of Finance and Administration and the Department of Arkansas State Police.

(c)(1) No applicant for an original license, that is an applicant who has never been licensed previously by any jurisdiction, shall be permitted to demonstrate ability to operate a motor vehicle as required under the provisions of this chapter unless and until the applicant has in his possession a valid instruction permit, properly issued not less than thirty (30) days prior to the date of application unless otherwise determined by the office.

(2) The instruction permit required under this subchapter shall be issued in accordance with the provisions of this chapter.

History. Acts 1937, No. 280, 16; Pope's Dig., 6840; Acts 1969, No. 141, 1; 1977, No. 863, 1; Acts 1989, No. 193, 2; Acts 1993, No. 445, 17. A.S.A. 1947, 75-318.

27-16-704. Examinations of applicants. [Effective July 1, 2002.]

(a) Every applicant for a driver's license, except as otherwise provided in this act, shall be examined in accordance with the provisions of this section.

(b)(1) The examination shall be held in the county where the applicant resides within not more than thirty (30) days from the date that application is made.

(2) The examination shall include a test of the applicant's eyesight, ability to read and understand the highway traffic laws of this state, an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and any further physical and mental examination deemed necessary by the office to operate a motor vehicle safely upon the highways.

(3) The test of the applicant's eyesight shall examine his or her visual acuity to read road signs and identify objects at a distance.

(4) The applicant shall have a minimum uncorrected visual acuity of 20/40 for an unrestricted license and a minimum corrected visual acuity of 20/50 for a restricted license. The applicant's field of vision shall be at least one hundred forty degrees (140°) for a person with two (2) functional eyes and at least one hundred five degrees (105°) for a person with one (1) functional eye.

(5) Applicants who fail the eyesight test shall be instructed that they should have their eyes examined by an eye care professional and secure corrective lenses, if necessary.

(6) The test of the applicant's eyesight shall be made on an optical testing instrument approved under standards established by the Director of the Department of Finance and Administration and the Department of Arkansas State Police.

(7) In addition, the applicant for a learner's license and an intermediate driver's license shall have the student's driving record checked to verify that the student has been free of a serious accident and conviction of a serious traffic violation for the last six (6) months

and that an applicant with an intermediate driver's license applying for a regular license has been free of a serious accident and conviction of a serious traffic violation for the last twelve (12) months.

(c)(1) No applicant for an original license, that is, an applicant who has never been licensed previously by any jurisdiction, shall be permitted to demonstrate ability to operate a motor vehicle as required under the provisions of this chapter unless and until the applicant has in his possession a valid instruction permit properly issued not less than thirty (30) days prior to the date of application, unless otherwise determined by the office.

(2) The instruction permit required under this subchapter shall be issued in accordance with the provisions of this act.

History. Acts 1937, No. 280, § 16; Pope's Dig., § 6840; Acts 1969, No. 141, § 1; 1977, No. 863, § 1; A.S.A. 1947, § 75-318; Acts 1989, No. 193, § 2; 1993, No. 445, § 17; 2001, No. 1694, § 4.

27-16-705. Examiners.

(a) An examination as provided for in this subchapter shall be conducted by the Arkansas State Police or by the duly authorized agents of the Director of the Department of Finance and Administration.

(b) No examination shall be conducted by local law enforcement officers or local citizens.

History. Acts 1937, No. 280, 17; Pope's Dig., 6841; Acts 1943, No. 128, 1; A.S.A. 1947, 75-319.

27-16-706. Written test - Contents.

The driver's license test shall include written questions concerning:

(1) The effects of the consumption of beverage alcohol products and the use of illegal drugs, prescription drugs, and nonprescription drugs on the ability of a person to operate a motor vehicle; and

(2) The legal and financial consequences resulting from violations of the state's laws prohibiting the operation of a motor vehicle while under the influence of alcohol or drugs.

History. Acts 1995, No. 711, § 1; 1995, No. 1105, § 1.

27-16-801. Licenses generally - Validity periods - Contents - Fees - Disposition of moneys. [Effective until July 1, 2002.]

(a)(1) In a manner prescribed by the commissioner, the office shall issue:

(A) A Class D license or a Class M license to each applicant qualified therefor, for a period of four (4) years, upon payment of twelve dollars ($12.00);

(B) A Class MD license to each applicant qualified therefor, for a period of not more than two (2) years, upon payment of two dollars ($2.00);

(C) Every applicant for a Class D, Class M, or Class MD license under §§ 27-16-704, 27-16-807, or 27-20-108 shall pay an examination fee of five dollars ($5.00) for the first examination and a fee of five dollars ($5.00) for each subsequent examination, except that for each examination after the third examination there shall be no charge if the applicant produces receipts for having paid the fees for the previous examinations. The examination fee shall be remitted in a manner prescribed by the commissioner.

(2) Each license shall include:

(A) A distinguishing number assigned to the licensee;

(B) The name, residence address (if the licensee is a law enforcement officer, at the officer's option the license shall disclose a post office box in lieu of the residence address), date of birth, and a brief description of the licensee; and

(C) A space upon which the licensee may affix his signature.

(3) The licensee shall affix his signature in ink in a space provided, and no license shall be valid until it shall have been so signed by the licensee.

(4)(A) At the time of initial issuance or at the time of renewal of a license, the distinguishing number assigned to the licensee for his license shall be the same as the licensee's social security number when the licensee has been assigned a social security number, or shall be a nine-digit number assigned to the specific licensee by the commissioner when the licensee has not been assigned a social security number.

(B) However, an applicant for the issuance or renewal of a Class D, Class M, or Class MD license may choose whether to use his or her social security number or a nine-digit number assigned by the commissioner as his or her license number.

(b)(1)(A) All licenses, as described in subsection (a) of this section, shall include a color photograph of the licensee, and such photograph shall be made a part of the license at the time of application. If the licensee is under eighteen years of age at the time the license is issued, the license shall state that the licensee was under eighteen years of age at the time of issuance. If the licensee was at least eighteen years of age but under twenty-one years

of age at the time the license is issued, the license shall state that the licensee was under twenty-one years of age at the time the license was issued.

(B) [Repealed.]

(2) A license may be valid without a photograph of the licensee when the commissioner is advised that the requirement of the photograph is either objectionable on the grounds of religious belief or the licensee is unavailable to have the photograph made.

(c)(1) In addition to the license fee prescribed by subsection (a) of this section, the office shall collect a penalty equal to fifty percent (50%) of the amount thereof from each driver, otherwise qualified, who shall operate a motor vehicle over the highways of this state without a valid license.

(2) Such penalty shall be in addition to any other penalty which may be prescribed by law.

(d) All license fees collected under subsection (a) of this section shall be deposited in the State Treasury as special revenues, and the net amount thereof shall be credited to the Department of Arkansas State Police Fund, to be used for the operation, maintenance, and improvement of the Department of Arkansas State Police.

(e)(1) The office shall not charge an additional fee for the color photograph provided for in subsection (b) of this section for those applicants making a renewal application for the first time.

(2) In addition to the regular license fee, a fee of one dollar ($1.00) shall be charged for all subsequent renewals.

(3) All persons applying for an Arkansas license for the first time and all persons who are required to take the driver's written examination as provided for in this act shall be charged the additional fee of one dollar ($1.00).

(4) All persons who are required to have their eyesight tested prior to initial licensing or upon subsequent license renewal as provided for in this act shall be charged an additional fee of one dollar ($1.00) upon issuance of the license.

(f) The office shall provide on the reverse side of the driver's license issued a statement and space whereby the licensee may certify willingness to make an anatomical gift under the provisions of § 20-17-601 et seq.

(g) Moneys collected from the penalty fee provided in subsection (c) of this section and the fees provided in subsection (e) of this section shall be deposited in the State Treasury into the Constitutional Officers Fund and the State Central Services Fund, and the net amount shall be credited to the Department of Finance and Administration to be used to help defray the cost of the driver license program which shall be payable therefrom.

(h) Such fees as are collected under subsection (a) of this section shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Department of Arkansas State Police Fund, to be used for the operation, maintenance, and improvement of the Department of Arkansas State Police.

(i) In addition to the license fees imposed in subsections (a) and (e) of this section, a fee of six dollars ($6.00) shall be charged for the issuance or renewal of any Class D, M, or MD license. The fees collected under this subsection shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Department of Arkansas State Police Fund, to be used for the payment of health insurance premiums for uniformed employees of the Department of Arkansas State Police.

History. Acts 1937, No. 280, §§ 18, 21; Pope's Dig., § 6842; Acts 1939, No. 72, § 1; 1941, No. 370, § 1; 1947, No. 393, § 1; 1957, No. 24, § 1; 1965, No. 493, § 1; 1967, No. 338, § 1; 1969, No. 276, § 1; 1977, No. 311, § 1; A.S.A. 1947, §§ 75-320, 75-325; Acts 1987, No. 274, § 2; 1989, No. 8, § 2; 1989, No. 193, § 3; 1989, No. 241, § 25; 1991, No. 782, §§ 1, 2; 1993, No. 445, §§ 18, 19; 1993, No. 1168, § 1; 1997, No. 495, § 1; 1999, No. 1004, § 1; 2001, No. 1500, § 1.

27-16-801. Licenses generally - Validity periods - Contents - Fees - Disposition of moneys. [Effective July 1, 2002.]

(a)(1) In a manner prescribed by the Commissioner of Motor Vehicles, the Office of Motor Vehicle shall issue:

(A) A Class D license or a Class M license to each applicant eighteen (18) years of age or more and qualified therefor for a period of four (4) years upon payment of twelve dollars ($12.00), an intermediate Class D or Class M license to each applicant between sixteen (16) and eighteen (18) years of age for a period of up to, two (2) years upon payment of twelve dollars ($12.00), and a learner's Class D license to each applicant between fourteen (14) and sixteen (16) years of age for a period of up to two (2) years upon payment of twelve dollars ($12.00);

(B) A Class MD license to each applicant qualified therefor, for a period of not more than two (2) years upon payment of two dollars ($2.00); and

(C) Every applicant for a Class D, Class M, or Class MD license under §§ 27-16-704, 27-16-807, or 27-20-108 shall pay an examination fee of five dollars ($5.00) for the first examination and a fee of five dollars ($5.00) for each subsequent examination, except that for each examination after the third examination there shall be no charge if the applicant produces receipts for having paid the fees for the previous examinations. The examination fee shall be remitted in a manner prescribed by the commissioner.

(2) Each license shall include:

(A) A distinguishing number assigned to the licensee;

(B) The name, residence address, date of birth, and a brief description of the licensee; and

(C) A space upon which the licensee may affix his or her signature.

(3) The licensee shall affix his or her signature in ink in a space provided, and no license shall be valid until it shall have been so signed by the licensee.

(4)(A) At the time of initial issuance or at the time of renewal of a license, the distinguishing number assigned to the licensee for his or her license shall be the same as the licensee's social security number when the licensee has been assigned a social security number or shall be a nine-digit number assigned to the specific licensee by the commissioner when the licensee has not been assigned a social security number.

(B) However, an applicant for the issuance or renewal of a Class D, Class M, or Class MD license may choose whether to use his or her social security number or a nine-digit number assigned by the commissioner as his or her license number.

(b)(1) All licenses, as described in subsection (a) of this section, shall include a color photograph of the licensee, and the photograph shall be made a part of the license at the time of application.

(2) A license may be valid without a photograph of the licensee when the commissioner is advised that the requirement of the photograph is either objectionable on the grounds of religious belief or that the licensee is unavailable to have the photograph made.

(c)(1) In addition to the license fee prescribed by subsection (a) of this section, the office shall collect a penalty equal to fifty percent (50%) of the amount thereof from each driver, otherwise qualified, who shall operate a motor vehicle over the highways of this state without a valid license.

(2) The penalty shall be in addition to any other penalty which may be prescribed by law.

(d) All license fees collected under subsection (a) of this section shall be deposited in the State Treasury as special revenues, and the net amount thereof shall be credited to the Department of Arkansas State Police Fund, to be used for the operation, maintenance, and improvement of the Department of Arkansas State Police.

(e)(1) The office shall not charge an additional fee for the color photograph provided for in subsection (b) of this section for those applicants making a renewal application for the first time.

(2) In addition to the regular license fee, a fee of one dollar ($1.00) shall be charged for all subsequent renewals.

(3) All persons applying for an Arkansas license for the first time and all persons who are required to take the driver's written examination as provided for in this act shall be charged the additional fee of one dollar ($1.00).

(4) All persons who are required to have their eyesight tested prior to initial licensing or upon subsequent license renewal as provided for in this act shall be charged an additional fee of one dollar ($1.00) upon issuance of the license.

(5) Each learner's license and intermediate driver's license issued shall be distinctive from the regular driver's license issued to a person eighteen (18) or more years of age.

(f) The office shall provide on the reverse side of the driver's license issued a statement and space whereby the licensee may certify willingness to make an anatomical gift under the provisions of the Arkansas Anatomical Gift Act, § 20-17-601 et seq.

(g) Moneys collected from the penalty fee provided in subsection (c) of this section and the fees provided in subsection (e) of this section shall be deposited in the State Treasury into the Constitutional Officers Fund and the State Central Services Fund, and the net amount shall be credited to the Department of Finance and Administration to be used to help defray the cost of the driver license program which shall be payable therefrom.

(h) The fees as are collected under subsection (a) of this section shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Department of Arkansas State Police Fund, to be used for the operation, maintenance, and improvement of the Department of Arkansas State Police.

(i) In addition to the license fees imposed in subsections (a) and (e) of this section, a fee of six dollars ($6.00) shall be charged for the issuance or renewal of any Class D, M, or MD license. The fees collected under this subsection shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Department of Arkansas State Police Fund, to be used for the payment of health insurance premiums for uniformed employees of the Department of Arkansas State Police.

History. Acts 1937, No. 280, §§ 18, 21; Pope's Dig., § 6842; Acts 1939, No. 72, § 1; 1941, No. 370, § 1; 1947, No. 393, § 1; 1957, No. 24, § 1; 1965, No. 493, § 1; 1967, No. 338, § 1; 1969, No. 276, § 1; 1977, No. 311, § 1; A.S.A. 1947, §§ 75-320, 75-325; Acts 1987, No. 274, § 2; 1989, No. 8, § 2; 1989, No. 193, § 3; 1989, No. 241, § 25; 1991, No. 782, §§ 1, 2; 1993, No. 445, §§ 18, 19; 1993, No. 1168, § 1; 1997, No. 495, § 1; 1999, No. 1004, § 1; 2001, No. 1500, § 1; 2001, No. 1694, § 5.

27-16-802. Instruction permits. [Effective until July 1, 2002.]

(a)(1) Any person who is at least fourteen (14) years of age may apply to the Office of Driver Services for an instruction permit.

(2) After the applicant has successfully passed all parts of the examination other than the driving test, the office may, in its discretion, issue to the applicant an instruction permit which shall entitle the applicant while having the permit in his immediate possession to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed driver eighteen (18) years of age or older who has had at least one (1) year of driving experience and who is occupying a seat beside the driver except in the event that the permittee is operating a motorcycle.

(3) Any instruction permit may be renewed or a new permit issued for an additional period of six (6) months.

(b)(1) The office, upon receiving proper application may, in its discretion, issue a restricted instruction permit effective for a school year or a more restricted permit to an applicant who is enrolled in a driver education program which includes practice driving and which is approved by the office even though the applicant has not reached the legal age to be eligible for a noncommercial license.

(2) The instruction permit shall entitle the permittee when he or she has the permit in his or her immediate possession to operate a motor vehicle only on a designated highway or within a designated area but only when an approved instructor is occupying a seat beside the permittee.

History. Acts 1937, No. 280, § 11; Pope's Dig., § 6835; Acts 1959, No. 307, § 14; A.S.A. 1947, § 75-310; Acts 1993, No. 445, § 20; 1997, No. 478, § 1; 1999, No. 25, § 2.

27-16-802. Instruction permits. [Effective July 1, 2002.]

(a)(1) Any person who is at least fourteen (14) years of age may apply to the Office of Motor Vehicle for an instruction permit.

(2) After the applicant has successfully passed all parts of the examination other than the driving test, the office may, in its discretion, issue to the applicant an instruction permit which shall entitle the applicant while having the permit in his or her immediate possession to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed driver who is at least twenty-one (21) years of age and who is occupying a seat beside the driver, except in the event that the permittee is operating a motorcycle.

(3) Any instruction permit may be renewed or a new permit issued for an additional period of six (6) months as long as the permittee has remained free of a serious accident and conviction of a serious traffic violation for at least the last six (6) months.

(4) Any passengers riding in the motor vehicle while a permittee is driving shall wear seat belts at all times.

(b)(1) The office, upon receiving proper application may, in its discretion, issue a restricted instruction permit effective for a school year or a more restricted permit to an applicant who is enrolled in a driver education program which includes practice driving and which is approved by the office even though the applicant has not reached the legal age to be eligible for a noncommercial license.

(2) The instruction permit shall entitle the permittee when he or she has the permit in his or her immediate possession to operate a motor vehicle only on a designated highway or within a designated area but only when an approved instructor is occupying a seat beside the permittee.

History. Acts 1937, No. 280, § 11; Pope's Dig., § 6835; Acts 1959, No. 307, § 14; A.S.A. 1947, § 75-310; Acts 1993, No. 445, § 20; 1997, No. 478, § 1; 1999, No. 25, § 2; 2001, No. 1694, § 6.

27-16-803. Temporary permits.

(a) The office may, in its discretion, issue a temporary driver's permit to an applicant for a driver's license permitting him to operate a motor vehicle while the office is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license.

(b)(1) The office may also, in its discretion, issue a temporary driver's permit to an applicant for a driver's license, permitting him to operate a motor vehicle, whose license has expired and who must be retested by the office as provided for in 27-16-704.

(2) The temporary permit shall be valid for not more than thirty (30) days.

(3) The permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

(c)(1) The office may issue a temporary driver's permit to an applicant for a commercial driver's license whose license has expired and who must be retested as provided for in the Arkansas Uniform Commercial Driver's License Act, 27-23-101 et seq., permitting him to operate a commercial motor vehicle.

(2) The temporary permit shall be valid for not more than sixty (60) days.

(3) The permit must be in his immediate possession while operating a commercial motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

(4) The office shall charge a ten dollar ($10.00) fee for the issuance of a temporary permit under this subsection. All license fees collected herein shall be deposited in accordance with 27-16-801 in the State Treasury as special revenues, and the net amount thereof shall be credited to the Department of Arkansas State Police Fund to be used for the operation, maintenance, and improvement of the Department of Arkansas State Police.

(d) All temporary permits issued under this section will expire on March 31, 1992.

History. Acts 1937, No. 280, 11; Pope's Dig., 6835; Acts 1959, No. 307, 14; 1983, No. 514, 1; Acts 1989, No. 707, 1, 2; 1993, No. 445, 21. A.S.A. 1947, 75-310.

27-16-804. Restricted licenses. [Effective until July 1, 2002.]

(a) The office, upon issuing any driver's license, shall have authority, whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the office may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b)(1) The office may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(2) All licensees under the age of sixteen (16) years shall be restricted to operation of a motor vehicle, motorcycles and motor-driven cycles excepted, only while accompanied by a licensed driver, eighteen (18) years of age or older, who has had at least one (1) year of driving experience, unless otherwise determined by the office.

(c) All licensees who have a tested uncorrected visual acuity of less than 20/40 shall be restricted to the operation of a motor vehicle, motorcycle, or motor-driven cycle only while they are wearing corrective lenses. No person shall be allowed to operate a motor vehicle, motorcycle, or a motor-driven cycle if he has a tested corrected visual acuity of less than 20/50 of if he has a field of vision less than one hundred forty degrees (140°) with two (2) functioning eyes or less than one hundred five degrees (105°) with one (1) functioning eye.

(d) The office may, upon receiving satisfactory evidence of any violation of the restrictions of a license, suspend or revoke it, but the licensees shall be entitled to a hearing as upon a suspension or revocation under this chapter.

(e) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

History. Acts 1937, No. 280, § 20, Pope's Dig., § 6844; Acts 1969, No. 350, § 1; 1977, No. 863, § 2; A.S.A. 1947, § 75-324; Acts 1989, No. 193, § 4; 1993, No. 445, § 22; 1997, No. 478, § 2.

27-16-804. Restricted licenses, learner's licenses, and intermediate licenses. [Effective July 1, 2002.]

(a) The Office of Motor Vehicle, upon issuing any driver's license, shall have authority, whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or other restrictions applicable to the licensee as the office may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b)(1) The office may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(2) The office may, upon a showing of need, waive any age restriction set forth in this chapter.

(c) All licensees who have a tested uncorrected visual acuity of less than 20/40 shall be restricted to the operation of a motor vehicle, motorcycle, or motor-driven cycle only while they are wearing corrective lenses. No person shall be allowed to operate a motor vehicle, motorcycle, or a motor-driven cycle if he or she has a tested corrected visual acuity of less than 20/50 of if he or she has a field of vision less than one hundred forty degrees (140°) with two (2) functioning eyes or less than one hundred five degrees (105°) with one (1) functioning eye.

(d) The office may, upon receiving satisfactory evidence of any violation of the restrictions of a license, suspend or revoke it, but the licensees shall be entitled to a hearing as upon a suspension or revocation under this chapter.

(e) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him or her.

(f)(1) The office shall have authority to issue a restricted driver's license, to be known as a "learner's license", to those persons under sixteen (16) years of age.

(2) The learner's license shall be issued only to an applicant with a valid instruction permit who is at least fourteen (14) years of age, who has remained free of a serious accident and conviction of a serious traffic violation in the last six (6) months, and who meets all other licensing examinations requirements of this chapter.

(3) The driver with a learner's license shall operate the motor vehicle on the public streets and highways only when:

(A) All passengers in the vehicle are wearing their seat belts at all times; and

(B) The driver with a learner's permit is being accompanied by a driver over twenty-one (21) years of age.

(g)(1) The office shall have authority to issue a restricted driver's license to those persons under eighteen (18) years of age called an intermediate driver's license.

(2) The intermediate driver's license shall be issued only to an applicant with a valid instruction permit or a learner's license who is at least sixteen (16) years of age, who has remained free of a serious accident and conviction of a serious traffic violation for at least the last six (6) months, and who meets all other licensing examination requirements of this chapter.

(3) The driver with an intermediate driver's license shall operate the motor vehicle on the public streets and highways only when all passengers in the vehicle are wearing their seat belts.

(h) No motor vehicle, nor the operator of a vehicle, nor the passengers of the vehicle shall be stopped, inspected, or detained solely to determine compliance with the requirement set out in this subchapter for wearing a seat belt.

History. Acts 1937, No. 280, § 20; Pope's Dig., § 6844; Acts 1969, No. 350, § 1; 1977, No. 863, § 2; A.S.A. 1947, § 75-324; Acts 1989, No. 193, § 4; 1993, No. 445, § 22; 1997, No. 478, § 2; 2001, No. 1694, § 7.

27-16-805. Identification purposes only.

(a)(1) The office may issue an identification card to those Arkansas residents fourteen (14) years of age or older who are not licensed drivers.

(2) The fee for such a card shall be five dollars ($5.00).

(b)(1) The card shall be valid for four (4) years and be renewable upon expiration.

(2) Those persons who are sixty (60) years old or older who qualify for this card shall be issued such card to be valid for life of the holder.

(c) Each card shall contain:

(1) A color photograph of the applicant;

(2) A physical description;

(3) The birthdate;

(4) The address;

(5) The date of issue; and

(6) The expiration date.

(d)(1) Any person who applies for such a card shall be required to show proof of identity.

(2) Refusal of an applicant to show such proof shall result in denial of the application.

History. Acts 1937, No. 280, 21; Acts 1977, No. 311, 2; 1985, No. 1039, 1; Acts 1989, No. 385, 1. A.S.A. 1947, 75-325.

27-16-806. Duplicates or substitutes.

(a) In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom it was issued may, upon payment of five dollars ($5.00), obtain a duplicate or substitute upon furnishing proof satisfactory to the office that the permit or license has been lost or destroyed.

(b) Moneys collected under the provisions of this section shall be deposited in the State Treasury into the Constitutional Officers Fund and the State Central Services Fund, and the net amount shall be credited to the Department of Finance and Administration to be used to help defray the cost of the color photograph driver license program which shall be payable therefrom.

History. Acts 1937, No. 280, 21; Pope's Dig., 6845; Acts 1977, No. 311, 2; Acts 1989, No. 385, 2; Acts 1993, No. 445, 23. A.S.A. 1947, 75-325.

27-16-807. Issuance to nonresident and military licensees.

(a) Any person sixteen (16) years of age or older who shall present to the office, or an authorized agent thereof, a valid driver's license, issued to the person by another state or by a branch of the armed services of the United States, which is currently valid or which expired not more than thirty-one (31) days prior to the date presented, shall be issued an Arkansas driver's license if he surrenders the license to the office, pays the license fee prescribed in § 27-16-801(a), pays the other fees required by § 27-16-801(e), pays a transfer fee of five dollars ($5,00), and is tested and passes the minimum requirements of the eyesight test prescribed in this chapter.

(b) The five dollar ($5.00) transfer fee is to be paid in lieu of the fees prescribed by § 27-16-801(a)(1)(C), but shall be collected and deposited in the same manner as prescribed by § 27-16-801(d).

History. Acts 1963, No. 147, § 1; A.S.A. 1947, § 75-352; Acts 1989, No. 193, § 5; 1995, No. 413, § 1.

27-16-808. Reinstatement charge.

(a) The Office of Driver Services shall charge a fee of twenty-five dollars ($25.00) for reinstating a driver's license suspended because of a conviction for any violation or offense other than a violation of § 5-65-103 or § 5-65-303.

(b) All proceeds remitted to the Office of Driver Services pursuant to the provisions of this section shall be deposited to the State Police Retirement Fund.

History. Acts 1995, No. 730, § 1.

27-16-809. Reciprocal recognition of foreign licenses.

The Arkansas Department of Finance and Administration is authorized to enter into driver license agreements or other cooperative arrangements with foreign countries for the reciprocal recognition of drivers' licenses.

History. Acts 1997, No. 1100, § 1.

27-16-901. Expiration and renewal of licenses. [Effective until July 1, 2002.]

(a)(1) Every driver's license shall expire at the end of the month in which it was issued four (4) years from its date of initial issuance unless the commissioner shall provide, by regulation, for some other staggered basis of expiration.

(2)(A) The commissioner shall have the authority, by regulation, to shorten or lengthen the term of any driver's license period, as necessary, to insure that approximately twenty-five percent (25%) of the total valid licenses are renewable each fiscal year.

(B)(i) All driver's licenses subject to change under this subsection shall also be subject to a pro rata adjustment of the license fee charged in 27-16-801(a).

(ii) The adjustment of the fee shall be carried out in the manner determined by the commissioner by regulation.

(b) Every driver's license shall be renewable on or before its expiration upon completion of an application, payment of the fees designated 27-16-801, and passage of the eyesight test required in 27-16-704 and shall be renewed without other examination, unless the commissioner has reason to believe that the licensee is no longer qualified to receive a license.

History. Acts 1937, No. 280, 22; Pope's Dig., 6846; Acts 1989, No. 193, 6; Acts 1993, No. 445, 24. A.S.A. 1947, 75-326.

27-16-901. Expiration and renewal of licenses. [Effective July 1, 2002.]

(a)(1)(A) Except for the intermediate' driver's license and the learner's license, every driver's license shall expire at the end of the month in which it was issued four (4) years from its date of initial issuance unless the Commissioner of Motor Vehicles shall provide, by regulation, for some other staggered basis of expiration.

(B) A learner's license shall be issued for no more than a two-year period and shall expire upon the driver reaching sixteen (16) years of age. Any person sixteen (16) years of age may apply for an intermediate driver's license provided that his or her driving record is free of a serious accident and conviction of a serious traffic violation for the most recent six-month period.

(C) Intermediate drivers' licenses shall be issued for no more than a two-year period and shall expire upon the driver reaching age eighteen (18) years of age and may be renewed at that time as a regular driver's license for four (4) years, so long as the intermediate driver has been free of a serious accident and conviction of a serious traffic violation for at least twelve (12) months prior to arriving at his or her eighteenth birthday.

(2)(A) The commissioner shall have the authority, by regulation, to shorten or lengthen the term of any driver's license period, as necessary, to ensure that approximately twenty-five percent (25%) of the total valid licenses are renewable each fiscal year.

(B)(i) All drivers' licenses subject to change under this subsection shall also be subject to a pro rata adjustment of the license fee charged in § 27-16-801 (a).

(ii) The adjustment of the fee shall be carried out in the manner determined by the commissioner by regulation.

(b) Every driver's license shall be renewable on or before its expiration upon completion of an application, payment of the fees designated in § 27-16-801, and passage of the eyesight test required in § 27-16-704 and shall be renewed without other examination, unless the commissioner has reason to believe that the licensee is no longer qualified to receive a license.

History. Acts 1937, No. 280, § 22; Pope's Dig., § 6846; A.S.A. 1947, § 75-326; Acts 1989, No. 193, § 6; 1993, No. 445, § 24; 2001, No. 1694, § 8.

27-16-902. Extension of expiration date of servicemen's licenses.

(a) Any person who enters a branch of the armed services of the United States, and who is, at the time of entry into the service, duly licensed to drive by the State of Arkansas,

may, on a form furnished by the office, apply for an official extension of the expiration date of his driver's license without additional fee.

(b)(1) Any extension of expiration date applied for under the provisions of this section shall be acted upon by the office and shall be granted for a period not to exceed thirty (30) days after the applicant's first tour of duty, or release from active duty, whichever occurs first.

(2) The extension by the applicant may be denied by the division for good cause.

(c) The Director of the Office of Driver Services, upon approval of the Director of the Department of Finance and Administration, shall promulgate all rules and regulations necessary for compliance with this section.

History. Acts 1969, No. 298, 1; A.S.A. 1947, 75-358.

27-16-903. Authority to cancel licenses.

(a)(1)(A) The Office of Driver Services is authorized to cancel any driver's license or identification card upon determining that:

(i) The licensee was not entitled to the issuance of it under this chapter;

(ii) The applicant failed to give the required or correct information in his application or committed any fraud in making the application; or

(iii) The licensee possessed, used, or created a forged, altered, or fraudulent driver's license.

(B) Upon cancellation of any such license, the office may additionally suspend or revoke any validly issued license of any licensee found in possession of an invalid license or who has caused or assisted in the issuance of an invalid license.

(2) The decision to suspend or revoke the original license of the licensee shall be made in accordance with the provisions of §§ 27-16-907 and 27-16-912.

(b) Upon cancellation, the licensee must surrender the license so cancelled.

History. Acts 1937, No. 280, § 25; Pope's Dig., § 6849; Acts 1959, No. 307, § 16; A.S.A. 1947, § 75-329; Acts 1993, No. 445, § 25; 1995, No. 483, § 1; 1999, No. 1077, § 1.

27-16-904. Death of person signing minor's application.

(a) The office, upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for a license, shall cancel the license and shall not issue a new license until such time as a new application, duly signed and verified is made as required by this chapter.

(b) This section shall not apply in the event the minor has attained the age of eighteen (18) years.

History. Acts 1937, No. 280, 15; Pope's Dig., 6839; A.S.A. 1947, 75-317.

27-16-905. Mandatory revocation for conviction of certain offenses.

The office shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Any felony in the commission of which a motor vehicle is used;

(3) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(4) Perjury or the making of a false affidavit or statement under oath to the office under this chapter or under any other law relating to the ownership or operation of motor vehicles; or

(5) Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months.

History. Acts 1937, No. 280, 29; Pope's Dig., 6853; Acts 1983, No. 549, 18; Acts 1993, No. 445, 26. A.S.A. 1947, 75-333.

27-16-906. Conviction in another state.

The office is authorized to suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of the person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of any driver.

History. Acts 1937, No. 280, 27; Pope's Dig., 6851; Acts 1959, No. 307, 15; Acts 1993, No. 445, 27. A.S.A. 1947, 75-331.

27-16-907. Suspension or revocation of licenses.

(a) The Office of Driver Services is authorized to suspend the license of any driver after a hearing upon a showing by its records or other sufficient evidence that the licensee:

(1) Has been convicted of an offense for which mandatory revocation of the license is required;

(2) Has been involved as a driver in any accident resulting in the death or personal injury of another or in serious property damage;

(3) Is an habitually reckless or negligent driver of a motor vehicle;

(4) Is an habitual violator of the traffic laws;

(5) Is incompetent to drive a motor vehicle;

(6) Has permitted an unlawful or fraudulent use of his license;

(7) Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation;

(8) Is receiving any type of welfare, tax, or other benefit or exemption as a blind or nearly blind person if the correctable vision of the person is less than 20/50 in the better eye or if the total visual field of the person is less than one hundred five degrees (105°);

(9) Is any person who is not lawfully within the United States;

(10) Was found by the office or its agent to have used or attempted to use a driver's license or identification card issued under § 27-16-805 that was fraudulent, counterfeit, or altered; or

(11) Was found by the office or its agent to have used or attempted to use the driver's license or identification card of another person by representing it as his or her own license or identification card issued under § 27-16-805.

(b) The office is authorized to secure from all state agencies involved the necessary information to comply with the provisions of this section.

(c)(1) Upon denial, suspension, or revocation of the license of any person as authorized under this section, the office shall notify the licensee in writing.

(2) Any licensee desiring a hearing shall notify the office in writing within twenty (20) days after receipt of the denial, suspension, or revocation.

(3) A hearing officer appointed by the Director of the Department of Finance and Administration shall schedule a hearing in an office of the Revenue Division of the

Department of Finance and Administration designated by the director for such hearings. The hearing shall be in the office in the county of residence of the licensee unless the director and licensee agree to another location for the hearing or agree that the hearing shall be held by telephone conference call.

(4) Based upon the evidence presented at the hearing, the hearing officer shall modify, rescind, or affirm the denial, suspension, or revocation of the license.

(d) Hearings conducted by the office under this section shall not be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1937, No. 280, § 30; Pope's Dig., § 6854; Acts 1967, No. 340, § 1; A.S.A. 1947, § 75-334; Acts 1987, No. 976, § 1; 1989, No. 193, § 7; 1993, No. 445, § 28; 1997, No. 1099, § 2; 2001, No. 744, § 1; 2001, No. 1057, § 1.

27-16-908. Nonresidents also subject.

The privilege of driving a motor vehicle on the highways of this state given to a nonresident under this chapter shall be subject to suspension or revocation by the office in like manner and for like cause as a driver's license issued under this chapter may be suspended or revoked.

History. Acts 1937, No. 280, 26; Pope's Dig., 6850; Acts 1993, No. 445, 29. A.S.A. 1947, 75-330.

27-16-909. Examination may be required.

(a) The office, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may, upon written notice of at least five (5) days to the licensee, require him to submit to an examination.

(b) Upon the conclusion of the examination, the office shall take action as may be appropriate and may suspend or revoke the license of the person or may permit him to retain his license or may issue a license subject to restrictions as permitted under 27-16-804.

(c) Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of his license.

History. Acts 1937, No. 280, 25; Pope's Dig., 6849; Acts 1959, No. 307, 16; Acts 1993, No. 445, 30. A.S.A. 1947, 75-329.

27-16-910. Effect of suspension or revocation.

Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this subchapter

shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until a new license is obtained when and as permitted under this chapter.

History. Acts 1937, No. 280, 33; Pope's Dig., 6857; Acts 1993, No. 445, 31. A.S.A. 1947, 75-337.

27-16-911. Surrender and return of license.

(a) The office, upon suspending or revoking a license, shall require that the license shall be surrendered to and be retained by the office.

(b) At the end of the period of suspension, the license shall be returned to the licensee.

History. Acts 1937, No. 280, 32; Pope's Dig., 6856; Acts 1993, No. 445, 32. A.S.A. 1947, 75-336.

27-16-912. Period of suspension or revocation.

The office shall not suspend a license for a period of more than one (1) year and upon revoking a license shall not in any event grant application for a new license until the expiration of one (1) year after the revocation.

History. Acts 1937, No. 280, 31; Pope's Dig., 6855; A.S.A. 1947, 75-335.

27-16-913. Right of appeal to court of record.

(a) Any person denied a license or whose license has been suspended or revoked by the Office of Driver Services, within thirty (30) days of receipt of the decision by the Office of Driver Services to deny, suspend, or revoke the license, may file a de novo petition of review in the Pulaski County Chancery Court or the chancery court in the county where the licensee or interested person resides.

(b) The filing of a petition of review shall not operate as an automatic stay of the decision of the hearing officer.

(c) A determination shall be made by the chancery judge on the issue of whether a stay should be granted.

(d) The chancery judge is vested with jurisdiction to determine whether the petitioner is entitled to a license or whether the decision of the hearing officer should be affirmed, modified, or reversed.

History. Acts 1937, No. 280, 34; Pope's Dig., 6858; Acts 1987, No. 976, 2. A.S.A. 1947, 75-338.

27-16-914. Suspension of operator's license of minor.

Upon receipt of an order of denial of driving privileges under 5-65-116 or 5-64-710, the Department of Finance and Administration shall:

(1) Suspend the motor vehicle operator's license of the minor for twelve (12) months, or until the minor reaches eighteen (18) years of age, whichever is longer; or

(2) In the event the minor's driver's license is under suspension by the department for another offense or other violations, the minor's driver's license shall be suspended an additional twelve (12) months, or until the minor reaches eighteen (18) years of age, whichever is longer; or

(3) If the minor has not been issued a driver's license, the issuance of a license shall be delayed for an additional twelve (12) months after the minor applies for a license, or until the minor reaches eighteen (18) years of age, whichever is longer.

History. Acts 1989 (3rd Ex. Sess.), No. 93, 2; 1993, No. 1257, 3.

27-16-915. Suspension for conviction of controlled substances offense.

(a) As used in this section, the term "drug offense" shall have the same meaning ascribed to that term as provided in 5-64-710(a)(1).

(b)(1)(A) Whenever a person pleads guilty, nolo contendere, or is found guilty of any criminal offense involving the illegal possession or use of controlled substances under 5-64-101 et seq., or of any drug offense, in this state or any other state, the court having jurisdiction of such matter, including any federal court, shall prepare and transmit to the Department of Finance and Administration an order to suspend the driving privileges of the person for six (6) months, provided any such order regarding a person who is a holder of a commercial driver's license issued under 27-23-101 et seq. or under the laws of any other state shall include the suspension of the driving privileges of that person to drive any commercial motor vehicle, as the term "commercial motor vehicle" is defined in 27-23-102, or as similarly defined by the laws of any other state, for a period of one (1) year.

(B) Courts within the State of Arkansas shall prepare and transmit all such orders within twenty-four (24) hours after the plea or finding to the department.

(C) Courts outside Arkansas having jurisdiction over any such person holding driving privileges issued by the State of Arkansas shall prepare and transmit such orders pursuant to agreements or

arrangements entered into between that state and the Director of the Department of Finance and Administration.

(D) Such arrangements or agreements may also provide for the forwarding by the department of orders issued by courts within this state to the state wherein any such person holds driving privileges issued by that state.

(2) For any such person holding driving privileges issued by the State of Arkansas, courts within the State of Arkansas in cases of extreme and unusual hardship may provide in an order for the issuance of a restricted driving permit to allow driving to and from a place of employment or to and from any scheduled sessions or meetings of support organizations, counseling, education, or treatment for persons who have addiction or abuse problems related to any substance or controlled substances.

(c) Upon receipt of an order of denial of driving privileges under this section, the Department of Finance and Administration shall:

(1) Suspend the driver's license of the person for six (6) months; or

(2) In the event the person's driver's license is under suspension by the department for another offense or other violations, the person's driver's license shall be suspended an additional six (6) months; or

(3) If the person has not been issued a driver's license, the issuance of a license by the department shall be delayed for an additional six (6) months after the person applies for a license.

(d) Upon receipt of an order of denial of driving privileges under this section, which order concerns a person who is a holder of a commercial driver's license issued under 27-23-101 et seq., the Department of Finance and Administration, in addition to any actions taken pursuant to subsection (c) of this section, shall:

(1) Suspend the commercial driver's license of the person for one (1) year; or

(2) In the event the person's commercial driver's license is under suspension by the department for another offense or other violations, the person's commercial driver's license shall, in addition to any penalties provided by the laws of this state, be suspended an additional one (1) year; or

(3) If the person has not been issued a commercial driver's license, the issuance of such a license by the department shall be delayed for an additional one-year period after the person applies for a license.

(e) Nothing contained in subsection (d) of this section shall require the issuance or reissuance of any commercial driver's license to any person following any suspension

who is otherwise ineligible pursuant to other laws of this state to obtain such issuance or reissuance.

(f) Penalties prescribed in this section shall be in addition to all other penalties prescribed by law for the offenses covered by this section.

History. Acts 1991, No. 1109, 1-3; 1993, No. 1257, 4.

OTHER TRANSPORATION REGULATIONS

27-18-101. Establishment.

(a)(1) The Arkansas State Police Commission is authorized to establish a program of driver education for training, retraining, and testing of motor vehicle drivers and applicants for motor vehicle driver licenses.

(2) In connection therewith, the commission shall promulgate reasonable rules and regulations, not inconsistent with law, for furthering the driver education program as authorized by this chapter.

(b) The driver education program, as established by the commission, shall be made available primarily to the various high schools of the state for the purposes set out by this chapter and secondarily for adults and nonschool participants for the same purposes.

History. Acts 1965, No. 531, 1; A.S.A. 1947, 75-1901.

27-18-102. Interagency cooperation.

All agencies, boards, commissions, and schools supported from public or private funds are directed to cooperate and lend whatever assistance as may be required for establishing a driver education program under the auspices of the Arkansas State Police Commission.

History. Acts 1965, No. 531, 4; A.S.A. 1947, 75-1904.

27-18-103. Inclusion of conservation and maintenance materials.

(a) The Department of Arkansas State Police or any other agency of the state charged with the responsibility of administering a driver training and testing program shall include in any printed driver and education materials prepared and distributed by the agency a section on fuel conservation and automobile care and maintenance.

(b) The conservation section of the driver training and education manual shall include guidelines for obtaining the greatest fuel economy from motor vehicles, the proper care and maintenance of the body, engine, transmission, tires, brakes, and other mechanical

equipment, and such other information as the agency deems appropriate to better prepare a prospective vehicle driver/owner to operate the vehicle efficiently as well as safely.

History. Acts 1979, No. 755, 1; A.S.A. 1947, 75-1907.

27-18-104. Funding.

The costs of operating and maintaining the driver education course as authorized in this chapter shall be payable from the current appropriations and funds available to the Arkansas State Police Commission for its operation and maintenance, including such special revenues as collected and deposited under the provisions of this chapter.

History. Acts 1965, No. 531, 3; A.S.A. 1947, 75-1903.

27-18-105. Limitation on contracts and other obligations.

(a) No contracts may be awarded or obligations otherwise incurred in relation to the program described in this chapter in excess of the State Treasury funds actually available as provided by law.

(b) The Arkansas State Police Commission shall have the power to accept and use grants and donations, and to use its unobligated cash income or other funds available to it, for the purpose of supplementing the State Treasury funds for financing the entire cost of the program.

History. Acts 1965, No. 531, 6; A.S.A. 1947, 75-1905.

27-18-106. Fees.

(a)(1) For any of the purposes set out in 27-18-101, the Arkansas State Police Commission is authorized to charge a fee of five dollars ($5.00) for any student of:

(A) An accredited high school;

(B) A state or privately supported college, university, or junior college; and

(C) Any vocational-technical training school engaging in the driver education course.

(2) The commission is further authorized to charge a fee of ten dollars ($10.00) for any other person engaging in the driver education course for the purposes set out in 27-18-101.

(3) Upon determination that a student or qualified prospective student of the driver education course is unable to pay the fee authorized by this section, the commission shall

waive the fee, as it is the purpose and intent of this chapter to provide driver education for the citizens of Arkansas.

(b) Such fees as are collected shall be remitted monthly by the commission to the State Treasury, there to be deposited as special revenues to the credit of the State Police Fund, to be used for the operation and maintenance of the commission.

History. Acts 1965, No. 531, 2; A.S.A. 1947, 75-1902.

27-18-107. Instruction as to removal of vehicle from roadway.

The Department of Education and the Department of Arkansas State Police shall include instruction within the Department of Education Driver Education and Training Program and the Driver's Manual of the Department of Arkansas State Police concerning the times when a driver involved in an accident must remove his vehicle from the roadway. The department shall include the subject on the examination for a driver's license.

History. Acts 1987, No. 598, 2.

27-18-108. Instruction manual.

The "Driver's Instruction Manual" of the Department of Arkansas State Police issued to persons who are preparing to take a driver's license examination shall include information on driver and highway safety matters, including:

(1) The effects of the consumption of beverage alcohol products and the use of illegal drugs, prescription drugs, and nonprescription drugs on the ability of a person to operate a motor vehicle;

(2) The hazards of driving while under the influence;

(3) The penalties for driving while under the influence;

(4) The effect and hazards of discarding litter upon or along the public highways of Arkansas and the penalties for violations of the Litter Control Act, § 8-6-401 et seq.; and

(5) The effects and hazards of unsafe driving through highway work zones and the penalties for violations for driving unsafely through highway work zones.

History. Acts 1995, No. 711, § 1; 1995, No. 1105, § 1; 2001, No. 853, § 1.

27-20-103. Prohibited sales to persons under age.

(a) It shall be unlawful for any person, firm, or corporation to sell to any person in this state under the age of sixteen (16) years any motor-driven cycle having less than two

hundred fifty (250) cubic centimeter displacement unless the person has a current valid license to operate the motor-driven cycle as authorized in this subchapter.

(b) It shall be unlawful for any person to sell or to offer for sale to any person in this state under sixteen (16) years of age any motorcycle or any motor-driven cycle having in excess of two hundred fifty (250) cubic centimeter displacement.

History. Acts 1959, No. 201, 7; 1975, No. 206, 4; A.S.A. 1947, 75-1707.

27-20-104. Standard equipment required.

(a) After July 5, 1977, all motor-driven cycles and all motorcycles used upon the public streets and highways of this state shall be equipped with the following standard equipment:

(1) At least one (1), but not more than two (2), headlights which, in the dark, shall emit a white light visible from a distance of at least five hundred feet (500') in front;

(2) A red reflector on the rear, which shall be visible from a distance of three hundred feet (300') to the rear when directly in front of a lawful upper beam head lamp of a motor vehicle;

(3) A lamp emitting a red light visible from a distance of five hundred feet (500') to the rear must be used in addition to the red reflector provided above;

(4) Good hand or foot brakes;

(5) A horn in good working order, but no bell, siren, or whistle shall be permitted;

(6) A standard muffler; and

(7) Handholds and support for the passenger's feet when designed to carry more than one (1) person, unless it is equipped with a sidecar.

(b) All passengers and operators of motorcycles and motor-driven cycles used upon the public streets and highways of this state shall be equipped with the following equipment under standards set forth by the Office of Motor Vehicle of the State of Arkansas:

(1) Protective headgear unless the person is twenty-one (21) years of age or older; and

(2) Protective glasses, goggles, or transparent face shields.

(c) The provisions of this section shall not apply to three-wheel motorcycles equipped with a cab and a windshield which do not exceed twenty horsepower (20 hp) when such motorcycles are used by municipal police departments.

(d) After July 5, 1977, all motorized bicycles used upon the public streets of this state shall be equipped with the following standard equipment:

(1) At least one (1), but not more than two (2), headlights which, in the dark, shall emit a white light visible from a distance of at least two hundred fifty feet (250') in front;

(2) A red reflector on the rear which shall be visible from a distance of one hundred fifty feet (150') to the rear when directly in front of a lawful upper beam head lamp of a motor vehicle;

(3) A lamp emitting a red light visible from a distance of two hundred fifty feet (250') to the rear must be used in addition to the red reflector provided above;

(4) Good hand or foot brakes;

(5) A horn in good working order, provided that no bell, siren, or whistle shall be permitted; and

(6) A standard muffler.

History. Acts 1959, No. 201, § 3; 1967, No. 296, § 1; 1973, No. 78, § 1; 1977, No. 561, § 2; 1985, No. 972, § 6; A.S.A. 1947, § 75-1703; Acts 1997, No. 453, § 1.

27-20-106. Operator's license required - Special license.

(a) No person who is sixteen (16) years of age or older shall operate a motorcycle, motor-driven cycle, or similarly classified motor vehicle which is subject to registration in this state upon the public streets and highways of this state unless the person holds a current valid motorcycle operator's license.

(b)(1) It shall be unlawful for any person to operate a motorcycle or motor-driven cycle in this state unless the person has a current valid motorcycle operator's license. However, any person fourteen (14) years of age or older who is under the lawful age to obtain a motorcycle operator's license may operate a motor driven cycle if that person has obtained a special license provided for in this section.

(2)(A) Any person fourteen (14) years of age, but under sixteen (16) years of age, may obtain a license to operate a motor-driven cycle if the motor of the motor-driven cycle displaces two hundred-fifty (250) cubic centimeters or less. This license shall expire upon the licensee's sixteenth birthday.

(B)(i) All such licenses shall be issued by the Office of Driver Services of the Revenue Division of the Department of Finance and Administration.

(ii) (a) Before any such license may be issued, the applicant shall furnish the office a copy of a certificate issued by the Department of Arkansas State Police showing that the applicant has taken and passed an examination given by the state police to determine the applicant's eligibility for a license.

(b) The state police shall prescribe a written examination and a road test examination which shall be satisfactorily completed by each applicant for a special license before any such license may be issued to the applicant by the office.

(iii)(a) The office shall charge a fee of two dollars ($2.00) for each such special license issued.

(b) Proceeds from the fees charged for these special licenses shall be deposited in the State Treasury as special revenues and shall be credited to the State Police Fund.

History. Acts 1975, No. 176, 1; 1975 (Extended Sess., 1976), No. 1236, 1; 1985, No. 972, 3; reen. Acts 1987, No. 1019, 1. A.S.A. 1947, 75-1709.1, 75-1710.

27-20-107. Application for and issuance of motorcycle operator's license.

(a) Any person desiring to obtain a motorcycle operator's license shall make an application to the Office of Driver Services for the issuance of the license.

(b) Evidence that a person has applied for and satisfactorily qualified for a motorcycle operator's license as required in this section shall be a certificate issued by the Department of Arkansas State Police that the applicant for a motorcycle operator's license has satisfactorily passed all phases of the motorcycle operator's examination as required in 27-20-108, if the applicant is sixteen (16) years of age or older.

(c) The license issued by the office may be a license limiting the named licensee to motorcycles, motor-driven cycles, or similarly classified motor vehicles; or, in the case where an applicant is sixteen (16) years of age or older and holds a current valid Class A, Class B, Class C, or Class D license, the office may endorse that license as evidence of proper qualification for the license as provided for by this subchapter.

(d)(1)(A) A motorcycle operator's license shall be issued for a period of four (4) years, and the fee for the license shall be the same as provided in 27-16-801.

(B) The office shall have the authority, by regulation, to shorten or lengthen the term of any motorcycle operator's license period, as necessary, and to make a pro rata adjustment of the fee charged.

(2) No fee will be required if such application is submitted at the time the applicant's Class A, Class B, Class C, or Class D license is renewed and the applicant has complied with all other provisions of this subchapter.

History. Acts 1975, No. 176, 2; 1975 (Extended Sess., 1976), No. 1236, 2; 1985, No. 972, 2; reen. Acts 1987, No. 1019, 2; 1989, No. 193, 8; 1993, No. 445, 34. A.S.A. 1947, 75-1711.

27-20-108. Operator's examination.

(a) The Department of Arkansas State Police shall prescribe an appropriate examination to be taken by a person who desires to obtain a motorcycle operator's license as required by this subchapter.

(b) The examination shall include:

(1) A written examination designed to determine the applicant's knowledge of traffic laws, ordinances, and regulations and other matters necessary to determine the applicant's knowledge of the operation of these motor vehicles;

(2) A vision test under standards established in 27-16-704 to determine whether the applicant's eyesight is adequate to safely operate the vehicle;

(3) An actual road test designed to determine the applicant's familiarity with the controls of the motor vehicle and the applicant's ability to safely operate the motor vehicle both in and out of traffic. However, the road test shall be waived for applicants who have sucessfully completed the Motorcycle Safety Foundation's motorcycle rider course, Riding and Street Skills, or any successor cirriculm. In order to qualify for this waiver, the applicant must submit proof of the course completion dated within ninety (90) days prior to the date of license application; and

(4) Such other tests as the Department of Arkansas State Police may deem necessary to assure safe operations on the streets and highways of this state.

History. Acts 1975, No. 176, 3; 1975 (Extended Sess., 1976), No. 1236, 3; 1985, No. 972, 2; reen. Acts 1987, No. 1019, 3; 1989, No. 193, 9. A.S.A. 1947, 75-1712. Acts 2001, No. 908, § 1.

27-20-109. Operator instruction.

(a) The Department of Education is authorized to prescribe and offer a course in motorcycle and motor-driven cycle operator instruction to be conducted as a part of the driver education program.

(b)(1) The course in motorcycle and motor-driven cycle operation may be conducted both at the elementary and high school levels.

(2) The course should include classroom instruction, actual operation of a motorcycle or motor-driven cycle, and other matters that the department may determine to be necessary to properly equip the student to safely operate a motorcycle.

History. Acts 1975, No. 176, 4; 1975 (Extended Sess., 1976), No. 1236, 4; reen. Acts 1987, No. 1019, 4; A.S.A. 1947, 75-1713.

27-20-110. Manner of riding.

It shall be unlawful for any person in the State of Arkansas:

(1) To ride any motor-driven cycle other than upon or astride a permanent or regular seat attached thereto;

(2) For any motor-driven cycle to be used to carry more than one (1) person unless it is equipped with a sidecar or an extra seat and supports for the passenger's feet;

(3) For more than two (2) persons to ride on any motor-driven cycle; and

(4) For any person under sixteen (16) years of age to carry another person as a passenger upon a motor-driven cycle.

History. Acts 1959, No. 201, 2; 1975, No. 206, 2; A.S.A. 1947, 75-1702.

27-20-111. Operation of motorized bicycles regulated - Certificate.

(a) The operators of motorized bicycles shall be subject to all state and local traffic laws, ordinances, and regulations.

(b) It shall be unlawful for any person to operate a motorized bicycle upon interstate highways, limited access highways, or sidewalks.

(c)(1)(A) It shall be unlawful for any person to operate a motorized bicycle upon a public street or highway within this state unless the person has a certificate to operate such a vehicle.

(B) Any person who has a motor-driven cycle license or motorcycle license or a Class A, Class B, Class C, or Class D license shall qualify to operate a motorized bicycle and is not required to obtain a certificate from the Department of Arkansas State Police for the operation of a motorized bicycle.

(2)(A)(i) All motorized bicycle certificates shall be issued by the

Department of Arkansas State Police.

(ii) No certificate shall be issued to a person under ten (10) years of age.

(B) Prior to being issued a certificate to operate a motorized bicycle, the applicant shall take and pass an examination pertaining to the rules of the road, a vision test, and a road test.

(C)(i) The Department of Arkansas State Police shall charge a fee of two dollars ($2.00) for each certificate issued.

(ii) The proceeds from these fees shall be deposited in the State Treasury as special revenues and credited to the State Police Fund.

History. Acts 1977, No. 561, 3; 1985, No. 972, 4; Acts 1987, No. 410, 1; 1993, No. 445, 35. A.S.A. 1947, 75-1714, 75-1714.1.

27-20-113. Suspension of license.

(a) Whenever the operator of any motorcycle, motor-driven cycle, or motorized bicycle in this state shall have been convicted of three (3) or more moving traffic violations in any twelve-month period, any license issued under this subchapter to that person shall be suspended for not less than six (6) months.

(b) Upon receipt of an order of denial of driving privileges under 5-64-710 or 5-65-116, the Department of Finance and Administration shall:

(1) Suspend any license issued the minor under this subchapter for twelve (12) months, or until the minor reaches eighteen (18) years of age, whichever is longer; or

(2) In the event any license issued the minor under this subchapter is under suspension by the department for another offense or other violations, that license shall be suspended an additional twelve (12) months, or until the minor reaches eighteen (18) years of age, whichever is longer; or

(3) If the minor has not been issued a license under this subchapter, the issuance of a license shall be delayed for an additional twelve (12) months after the minor applies for a license, or until the minor reaches eighteen (18) years of age, whichever is longer.

(c) Upon receipt of an order of denial of driving privileges under 27-16-915, the Department of Finance and Administration shall:

(1) Suspend any license issued the person under this subchapter for twelve (12) months; or

(2) In the event any license issued the person under this subchapter is under suspension by the department for another offense or other violations, that license shall be suspended an additional twelve (12) months; or

(3) If the person has not been issued a license under this subchapter, the issuance of a license shall be delayed for an additional twelve (12) months after the person applies for such a license.

(d) Penalties prescribed in this section shall be in addition to all other penalties prescribed by law for offenses covered by this section.

History. Acts 1959, No. 201, 5; Acts 1993, No. 1257, 5. A.S.A. 1947, 75-1705.

27-20-116. Exemptions.

Persons who operate vehicles described in 27-20-101, when operation of the vehicle shall be on a farm, private property, or specifically for moving to a farm, shall be exempt from the provisions of this subchapter.

History. Acts 1985, No. 972, 5; A.S.A. 1947, 75-1701.1.

27-20-117. Automatic issuance of operator's license.

Notwithstanding any provision of Subchapter 1 of Chapter 20 of Title 27 of the Arkansas Code or any other laws to the contrary, when a person holding a valid motor-driven cycle operator's license reaches sixteen (16) years of age, he or she shall automatically be issued a motorcycle operator's license and shall not be required to submit to the examinations prescribed by 27-20-108.

History. Acts 1991, No. 614, 1.

27-20-201. Penalty.

Any owner of a three-wheeled or four-wheeled all-terrain cycle failing to register it within twenty (30) calendar days after the transfer date or the date of release of a lien by a prior lienholder whichever is greater shall be assessed an additional penalty of three dollars ($3.00) for each ten-calendar-day period or fraction thereof for which he or she fails to properly register the cycle until the penalty reaches the same amount as the registration fee of the cycle to be registered.

History. Acts 1983, No. 872, § 1; A.S.A. 1947, § 75-1717; Acts 1997, No. 809, § 2; 2001, No. 462, § 1.

27-20-202. Registration required.

(a) All owners of three-wheeled or four-wheeled all-terrain cycles which are not otherwise required to be registered by law shall, within thirty (30) calander days of acquiring the three-wheeled or four-wheeled cycles, register them with the Director of the Department of Finance and Administration.

(b)(1) The owners shall offer proof of ownership satisfactory to the department.

(2) If the person seeking to register the all-terrain cycle cannot offer satisfactory proof of ownership, the department may register the all-terrain cycle if the person seeking registration posts a bond equal to at least one and one-half (1 1/2) times the market value of the all-terrain cycle.

(A) The bond shall be a cash bond, a letter of credit, a surety bond issued by a fidelity or surety company authorized to do business in Arkansas, or a personal bond signed by at least two (2) property owners in this state.

(B) The bond shall be for a period of three (3) years and made payable to the Department of Finance and Administration to be used by the department to pay any valid claim arising from the disputed ownership of the all-terrain cycle.

(c) The cost of registration shall be five dollars ($5.00).

History. Acts 1983, No. 872, 1; Acts 1993, No. 1308, 1. A.S.A. 1947, 75-1717. Acts 2001, No. 462, § 2.

27-20-203. No equipment or inspection requirements.

There shall be no equipment requirement or safety inspection requirements as a precondition to registration of three (3) or four (4) wheeled all-terrain cycles.

History. Acts 1983, No. 872, 1; A.S.A. 1947, 75-1717.

27-20-204. Taxes to be paid.

The tax imposed by the Arkansas Gross Receipts Act of 1941, 26-52-101 et seq., or the Compensating Tax Act, 26-53-101 et seq., on the sale of three (3) or four (4) wheeled all-terrain cycles shall be due and paid to the Director of the Department of Finance and Administration at the time of registration by the owners.

History. Acts 1983, No. 872, 1; A.S.A. 1947, 75-1717.

27-20-205. Certificate of title.

(a) The Director of the Department of Finance and Administration shall issue a certificate of title to the owner of a three (3) or four (4) wheeled all-terrain cycle that has been registered with the department.

(b) The certificate shall identify the owner's name and address, the vehicle manufacturer, model, year, identification number, seller, date of sale, lienholder, and lienholder's address.

History. Acts 1983, No. 872, 1; A.S.A. 1947, 75-1717.

27-20-206. Numbered license decal.

The Director of the Department of Finance and Administration shall furnish the owners of three (3) or four (4) wheeled all-terrain cycles that have been registered with the department a numbered license decal which shall be attached to the left front side of the cycle.

History. Acts 1983, No. 872, 1; A.S.A. 1947, 75-1717.

27-20-207. No renewal of registration.

No renewal of registration of three (3) or four (4) wheeled all-terrain cycles shall be required.

History. Acts 1983, No. 872, 1; A.S.A. 1947, 75-1717.

27-21-107. Operation by minors - Manner of operation.

(a)(1) A person twelve (12) years of age and older shall be entitled to operate an all-terrain vehicle in this state if the use is in compliance with all other provisions of this chapter.

(2) A person less than twelve (12) years of age shall be entitled to operate an all-terrain vehicle in this state only if he or she is under the direct supervision of a person who is at least eighteen (18) years of age or if he or she is on land owned by, leased, rented, or under the direct control of his parent or legal guardian, or if he or she is on land with the permission of the owner.

(b) A person shall not operate an all-terrain vehicle in this state:

(1) At a rate of speed greater than is reasonable and proper under the conditions then existing.

(2) During the hours from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise without displaying a lighted headlight and a lighted taillight.

History. Acts 1987, No. 804, 4.

27-37-702. Seat belt use required - Applicability of subchapter.

(a) Each driver and front seat passenger in any motor vehicle operated on a street or highway in this state shall wear a properly adjusted and fastened seat belt.

(b) This subchapter shall not apply to the following:

(1) Passenger automobiles manufactured before July 1, 1968, and all other motor vehicles manufactured before January 1, 1972;

(2) Passengers and drivers with a physical disability which contraindicates the use of a seat belt, and which condition is certified by a physician who states the nature of the disability, as well as the reason the use of a seat belt is inappropriate;

(3) Children under five (5) years of age who require protection under the Child Passenger Protection Act, § 27-34-101 et seq.; and

(4) Drivers who are rural letter carriers of the United States Postal Service while performing their duties as rural letter carriers.

History. Acts 1991, No. 562, §§ 2, 3; 1997, No. 208, § 34.

27-50-306. Additional penalties on conviction of moving traffic violations.

In addition to the penalties provided by law, after the conviction of any person for any moving traffic violation, the trial judge or magistrate may, in disposition and assessing penalty, consider the previous traffic conviction record and impose the following penalties, or combination of penalties:

(1) Suspend the driver's license for any period not to exceed one (1) year; or

(2) Suspend the driver's license for any period, not to exceed one (1) year, but grant a conditional permit to drive during the suspension, by imposing conditions and restrictions, not to exceed one (1) year, defining circumstances under which the violator will be allowed to drive while under suspension; or

(3) Require the attendance of the violator at a driver's training school; or

(4) Require the violator to retake the driver's test, or furnish proof of adequate sight or hearing necessary for driving, or produce proof of physical or mental capacity and ability to drive; or

(5) Require minors to write themes or essays on safe driving; or

(6) Place a minor under probationary conditions, as determined by the court in its reasonable discretion, designed as a reasonable and suitable preventative and educational safeguard to prevent future traffic violations by the minor.

History. Acts 1961, No. 143, 1; A.S.A. 1947, 75-1038a.

27-50-307. Negligent homicide.

(a) When the death of any person ensues within one (1) year as a proximate result of injury received by the driving of any vehicle in reckless or wanton disregard of the safety of others, the person operating the vehicle shall be guilty of negligent homicide.

(b) The commissioner shall revoke the operator's or chauffeur's license of any person convicted of negligent homicide under the provisions of this section.

(c) The offense of negligent homicide shall be included in and be a lesser degree of the offense of involuntary manslaughter.

History. Acts 1937, No. 300, 48; Pope's Dig., 6706; Acts 1955, No. 174, 1; A.S.A. 1947, 75-1001.

27-50-308. Reckless driving.

(a) Any person who drives any vehicle in such a manner as to indicate a wanton disregard for the safety of persons or property is guilty of reckless driving.

(b)(1)(A) If physical injury to a person results, every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than thirty (30) days nor more than ninety (90) days or by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(B) Otherwise, every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days or a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500), or by both such fine and imprisonment.

(2)(A) For a second or subsequent offense occurring within three (3) years of the first offense, every person convicted of reckless driving shall be punished by imprisonment for not less than thirty (30) days nor more than six (6) months or by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(B) However, if the second or subsequent offense involves physical injury to a person, the person convicted shall be punished by imprisonment for not less than sixty (60) days nor more than one (1) year or by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

History. Acts 1937, No. 300, 50; Pope's Dig., 6708; Acts 1955, No. 186, 1; Acts 1987, No. 258, 1. A.S.A. 1947, 75-1003.

27-50-702. Request for entry or postponement of judgment.

(a) At the request of the defendant, parent of a minor defendant, or counsel for the defense, judgment shall be entered as quickly as feasible and not more than ten (10) days following such request.

(b) At the request of the defendant, parent of a minor defendant, or the defense, probation may be continued and judgment for more than one (1) year.

History. Acts 1985, No. 967, 2; Acts 1987, No. 457, 1. A.S.A. 1947, 75-1060.

27-50-803. Notification when minor convicted.

Whenever any court in this state shall convict any person under the age of eighteen (18) years of any moving traffic violation under the laws of this state, or under any municipal ordinance, whether the fine and sentence imposed shall be collected or whether it may be suspended, the convicting court shall notify in writing the parents, guardian, or other person who signed the application of the person for an instructor's permit or operator's license as required by the provisions of 27-16-702. If the convicted person does not have an instructor's permit or operator's license, the court shall notify the father or mother of the person, if living, or the guardian or other person having custody of the person of the conviction.

History. Acts 1967, No. 92, 1; A.S.A. 1947, 75-1044.

27-51-212. Speed limit near schools - Exceptions.

(a) No person shall operate a motor vehicle in excess of twenty-five (25) miles per hour when passing a school building or school zone during school hours when children are present and outside the building.

(b) This speed limit shall not be applicable upon the freeways and interstate highways of this state or to school zones adequately protected by a steel fence limiting access to and egress from safety crossings.

History. Acts 1977, No. 229, 1; A.S.A. 1947, 75-601.5.

27-101-202. Restrictions on manner of operation.

No person:

(1) Shall operate any motorboat or vessel or manipulate any water skis, aquaplane, personal watercraft, or similar device in a reckless or negligent manner that endangers the life, limb, or property of any person, including, but not limited to, weaving through congested vessel traffic, operating within one hundred feet (100') of a towboat that is underway, jumping the wake of another vessel too close to such other vessel, or when visibility around such other vessel is obstructed and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel;

(2) Shall operate a motorboat on the waters of this state at a rate of speed that creates a hazardous wash or wake upon approaching or passing vessels, including, but not limited to, a wake that causes other vessels to take on water, or a wake sufficient to toss occupants of other vessels about in a manner to cause injury or the risk of injury;

(3) Shall operate a motorboat upon the waters of this state within one hundred feet (100') of a designated recreation area, dock, pier, raft, float, anchored boat, dam, intake structure, or other obstruction at a speed exceeding five (5) miles per hour unless a contrary speed limit shall have been established in the designated area. However, in no case shall any motor boat be driven in a manner or at a speed that exceeds the safe and reasonable limits under the existing circumstances;

(4) Shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, an aquaplane, or similar device may be affected or controlled in a way that causes the water skis, aquaplane, or similar device, or any person thereon, to collide with or strike against any object or persons;

(5) Shall operate a vessel on any waters of this state for towing a person or persons on water skis, or an aquaplane, personal watercraft, or similar device, unless there is in the vessel a person twelve (12) years of age or older, in addition to the operator, in a position to observe the progress of the person or persons being towed. However, if the towing boat is equipped with a wide-angle convex marine rear-view mirror in a position to observe the skiers being towed, the above requirement shall not apply;

(6) Shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane or similar device, nor shall any person engage in water skiing, aquaplaning, or similar activity at any time between the hours from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. However, the provisions of this subdivision (6) do not apply to night water skiing or aquaplaning on controlled areas designated for those purposes where adequate lighting is provided;

(7) Shall operate any motorboat or vessel or manipulate any water skis, aquaplane, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate,

or marijuana or while under any physical or mental disability so as to be incapable of operating the motorboat or vessel safely under the prevailing circumstances;

(8) Shall load any vessel used on the waters of this state with passengers or cargo beyond its safe carrying capacity, as indicated on the manufacturer's capacity plate, or power any vessel with an outboard motor which exceeds the maximum horsepower rating specified by the manufacturer. In addition, no person shall load a boat without a capacity plate in a manner that is unsafe or that results in the sinking or capsizing of the boat;

(9) If operating a motorboat of twenty-six feet (26') or less in length, shall allow any person to ride or sit on the gunwales or on the decking over the bow of the vessel while underway unless the vessel is equipped with adequate guards or railing to prevent passengers from being lost overboard. However, this restriction shall not apply to persons occupying the gunwales or the decking over the bow for necessary purposes such as mooring or casting off;

(10) If owning or having control of a motorboat of ten horsepower (10 HP) or more, shall permit a person under twelve (12) years old to operate the motorboat of ten horsepower (10 HP) or more except under the direct visible and audible supervision of a parent, guardian, or other person over seventeen (17) years of age;

(11) Shall operate any vessel or manipulate any water skis, aquaplane, personal watercraft, or similar device in a grossly negligent manner that results in serious injury or death to any person; or

(12) Shall operate a vessel upon the waters of this state in a negligent manner, including, but not limited to:

(A) Inattentive operation;

(B) Failure to keep a proper lookout;

(C) Failure to observe the inland navigation rules of the road, as implemented by the United States Coast Guard; or

(D) Operating in a manner which results in a collision with another vessel or object.

History. Acts 1959, No. 453, §§ 9, 12, 17; 1961, No. 423, §§ 3, 4; 1961, No. 425, § 1; 1965, No. 408, §§ 2, 3; A.S.A. 1947, §§ 21-229, 21-232, 21-237; Acts 1987, No. 122, § 3; 1995, No. 517, §§ 4, 5, 6, 7; 1995, No. 1077, § 1.

27-101-602. Regulation of personal watercraft.

(a)(1) No person shall operate a personal watercraft unless each person aboard is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard.

(2) Provided, no person aboard a personal watercraft shall use an inflatable personal flotation device to meet the personal flotation device requirement of this subdivision (a)(2).

(b) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach such lanyard to his person, clothing, or personal flotation device as appropriate for the specific vessel.

(c) No person shall operate a personal watercraft at any time between thirty (30) minutes after sunset and thirty (30) minutes before sunrise.

(d) No person under fourteen (14) years of age shall operate a personal watercraft on the waters of this state, except:

(1) A person at least twelve (12) years of age may operate a personal watercraft if a person at least eighteen (18) years of age is aboard the vessel; or

(2) A person under twelve (12) years of age may operate a personal watercraft if a person at least twenty-one (21) years of age is aboard the vessel and in a position to take immediate control of the vessel.

(e)(1) Every personal watercraft shall at all times be operated in a reasonable and prudent manner. No person shall operate a personal watercraft in an unsafe or reckless manner.

(2) Unsafe personal watercraft operation shall include, but not be limited to the following:

(A) Becoming airborne or completely leaving the water while crossing the wake of another vessel within one hundred (100') feet of the vessel creating the wake;

(B) Weaving through congested traffic;

(C) Operating at greater than slow no-wake speed within one hundred feet (100') of an anchored or moored vessel, shoreline, dock, pier, swim float, marked swim area, swimmer, surfer, person engaged in angling or any manually propelled vessel; and

(D)(i) Operating contrary to the rules of the road or following too close to another vessel, including another

personal watercraft.

(ii) For the purposes of this section, following too close shall be construed as proceeding in the same direction and operating at a speed in excess of ten miles per hour (10 m.p.h.) when approaching within one hundred feet (100') to the rear or fifty feet (50') to the side of another motorboat or sailboat which is underway unless such vessel is operating in a channel too narrow to keep the required distance, in which case a personal watercraft may be operated at a speed which is reasonable and prudent for the existing conditions.

(f) No person who owns a personal watercraft or who has charge over or control of a personal watercraft shall authorize or knowingly permit the personal watercraft to be operated in violation of this subchapter.

History. Acts 1999, No. 756, § 2.